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Fountainhall

HISTORICAL NOTICES

OF SCOTISH AFFAIRS,

SELECTED FROM THE MANUSCRIPTS OF

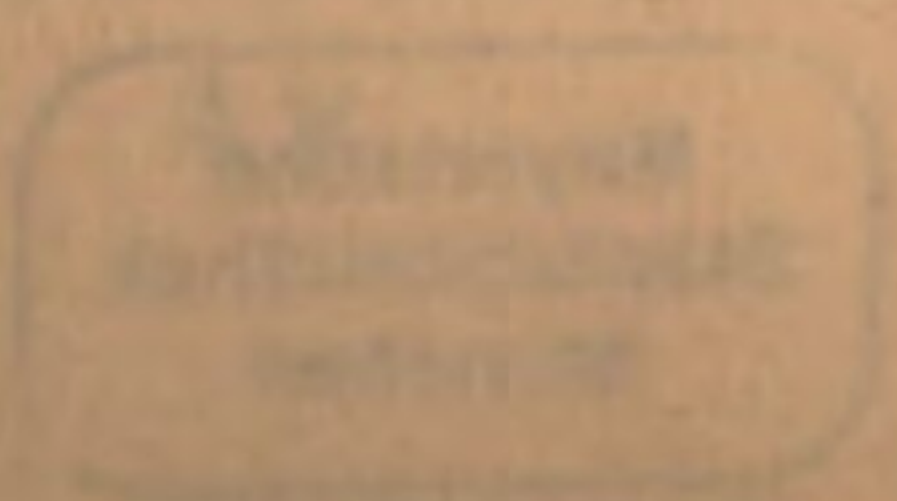
SIR JOHN LAUDER OF FOUNTAINHALL, BART.,

ONE OF THE SENATORS OF THE COLLEGE OF JUSTICE.

VOLUME SECOND. 1683—1688.

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FOLIO MANUSCRIPT, A. 13.

Page 1.

SOME DECISIONS OF THE LORDS OF THE SESSION, PRIVY
COUNSELL, JUSTICE COURT, AND EXCHEQUER.

WITH SOME OBSERVATIONS AND REFLECTIONS ON
SOME OF THEM, FROM THE FIRST OF NOVEMBER 1683,
TILL THE FIRST OF AUGUST 1688, (OR THE FIRST OF
NOVEMBER,) BEING FIVE YEARS OBSERVES.

WITH SOME HISTORICK REMARKS HEIR AND THEIR INTERMINGLED SHORTLY;
IN REGARD I HAVE A LARGE HISTORICK MANUSCRIPT APART BY IT SELFE.¹

WINTER SESSION, 1683.

1 & 2 *Novembris* 1683.—In this laft Vacation, the Lord Nairne and No. 1,
Lord Nevoy having deceaffed, (tho fome alledged they ware both *civiliter* ^{P. 1.}
mortui long before as to ufe,) the King, by 2 letters, nominats Sir Thomas
Stuart of Blair, late clerk of the Bills, and the Regifter's fon-in-law, to
fucceid Nevoy; and Sir Patrick Lyon of Carfe, advocat and Admirall-

¹ The Author, at the top of the leaf, has written—"This is a Continuation of the short Observes
I have thought fitt to make of some of the Lords of Sessions Decisions, beginning wheir a former
folio Law Manuscript, and collection of some of their Practiques, Interlocutors, and Decisions
(which is marked with the letter E.) does end, viz., at the last of October 1683; so that this
begins with November that year 1683. And heir I repeat that same apologie I have in the
former Manuscript, why many of thir Observes are imperfite, and without the full case and
debate, because I have thesse elsewheir; and brevity is studyed to avoid repetition.

"To remember, that this and my other Collections of this kind are only a rude and imperfite
draught, containing the *prima cura* and materials from which, with God's assistance, I am to
inlarge and forme thir Decisions into a more perfit and accurate method and scheme, when I shall
have leisure.

Discite justitiam moniti, et non temnere Divos.

*Quid juvat innumeros scire atque revolvere casus,
Si facienda fugis, si fugienda facis."*

Depute, to fucceed Nairne ; and accordingly this 2^d day Blair entred on his tryall as a probationer ; and his 3 dayes being ended, conforme to the A&t of Sederunt in 1674 for trying the Lords, then Carle entred, and both ware fworne and admitted. (See my folio Law Manuscript marked E, at the 11 day of Aprile 1683, page 320, 321. *Item*, My 8^{vo} Manuscript of Sessio[n] occurments, at the relation of thesse 2 Lords deceasse in and June 1683.)

2^{do}. *Eodem die*.—The Lords enact, that only 2 of them shall come to the fyde-bar at once, because of the great confusion occasioned by ther frequenting their of.

3^{tio}. The Comisars of Edenbrugh have ane A&t of the Lords, that no advocacy shall passe of any proces depending before them, till the Clerk of the Bill-Chamber or his fervants intimat it to the Comisars : which James Nicolson and the other fervants refused to obey, feing the Comisars, or the parties against whom the advocations are fought, may have some attending on the presenting of such bills ; and the Bill-Chamber have no tyme to doe it, nather does any pay them for their pains.

No. 2, p. 2. 3 *Novembris* 1683.—Ther is a Privy Counsell called extraordinary, for reading a letter from the King, repreiving Gordon of Earleston for a moneth farder.

2^{do}. The 5^t of November (being the commemoration day of the Gunpowder Plot thesse 80 years almost) is so far neglected and wilfully forgot this year, to please the Papists, that nather is ther any sermon upon it, nor are the cannons of the Castle shot, as ever used to be done ; the Bisshop pretending ther was nather A&t of Parliament nor Privy Counsell for observing it in Scotland : false,—yet the Magistrats of the good Toune of Edinburgh did not neglect to ring ther bells, and put on bonfyres.

No. 3, p. 2. *Eodem* 5 *Novembris* 1683.—The Counsell meits upon occasion of 2 letters from the King : The 1st, proroguing the Parliament to the 8^t of Aprile nixt. The 2^d, anent the 12 Scots prisoners sent doune from London, wher they ware apprehended in June last, on the breaking out of the Phanatick plot ; and wer shipped on the 1 of November, but did

not arrive at Leith till the 14 of that moneth, and thence ware transported to the Tolbuith of Edinburgh, to be cloffe prifoners :—ther names are Campbell of Cefnock, elder and younger ; Muir of Rowallan, and his eldeft fone, and Fairly of Bruntffeild his fon-in-law ; Bailzie of Jerrefwood ; Craufurdland ; Comifar Alexander Monro ; Murray of Tippermuir ; Mr. Spence, fervant to the late Earle of Argile ; Mr. William Carstairs, fon to Mr. John Carstairs, once minifter at Glasgaw ; and one Hepburne a minifter.

7 *Novembris* 1683.—Major Biggar having difponed his lands of Wolmot No. 6, to Hew Wallace's fon, and he having raifed a declarator, and being minor, ^{P. 3.} they forgot in the fummons and executions to infert his father's name as adminiftrator to him of the law, and joynt perfhuar ; yet the Lords on a bill (tho the youth was out of the country) gave his father curator to him for authorizing him in this perfhuit.

2^{do}. The Earle of Lauderdale, upon a bill to the Lords, gets a ftop to the charge of horning given him by Claverhoufe, the Hy Trefurer, and Hew Wallace cafh-keiper, on the Lords ther decreit anent the Mint, in regard he offered obedience to the King's finall determination in May laft, and fo ought not to be charged for the wholle 72,000 lb. fterling, contained in the Lords of Seffion's decreet.

3^{tio}. The Lords enacts, That any bills of fufpenfion they fhall heirafter appoint to be fummarly difcufft upon the bill without paffing, that as the Clerk of the Bills was formerly ordained to get his dues as if it ware pafft, fo the King's Signet moft be paid ther dues, as if it ware exped ther : which A&t was in favors of the Secretaries.

4^{to}. It was refolved by our Statefmen, That none heirafter obtain a remiffion pafft the Sealls, efpecially if it be for rebellion, or refet of rebels, except firft he take the Teft ; refufers being unworthy of that favor.

8 *Novembris* 1683.—At Privy Counfell, the Duke of Hamilton, as No. 10, Shireff of Clidefdale, is perfhued for not diffipating and difcovering a ^{P. 4.} field Conventicle kept lately, in September laft, in his fhire, at the Kirk of the Shots, conforme to the A&t of Privy Counfell made in May

1682, ordaining Shireffs on notice of fuch meittings immediatly to acquaint the Privy Counsell, or some Officer of State; and allows the tyme for it to be at the rate of 3 mile the hower. The Counsell, after a long discourfe had by the Duke, affoilzied him, in regard he gave his oath he could doe no diligence, feing that meiting came not to his knowledge till 14 dayes after; and that ther ware fundry squades of the King's forces lying in that shire who should ather have diffipat them, or acquainted him: But they fyned the heritors of the parish within which it was keiped, (and particularly the laird of Dundas, in whoffe ground it was,) in 50 lb. a-peice, tho they dwelt not upon the ground, and tho Dundasse's commissiioners, so soon as they heard of it, came and searched, and put out the tennent of the land, and threw downe the house: But reserved action to the heritors against the tennents accessory, and thoffe present at the Conventicle, conforme to the A&t of Privy Counsell making heritors lyable.

2^{do}. Campbell of Caddel is called as cautioner for Mr. Thomas Hog, a Non-conformist minister. He produces him to the Counsell; and in regard he would not depone how many tymes he had preached and baptized since the last Indemnity, he is holden as confest, and fyned in 5000 mks., and imprisoned till he pay it; and then to be sent abroad, never to returne from his banishment again without the Counsell's licence.

3^{tio}. Mr. John Stewart of Askog, advocat, being cautioner for producing some of the firname of Macnaughtan, and they not appearing, his bond is forfeited.

4^{to}. The toune of Kirkcaldy are pershued for pulling doune a house near to ther Tolbuith which they ware repairing. Alledged, They committed no ryot, because they produced a disposition to the house. Answered, The disponder had no right. This dips on the civill point of competition.

No. 13, 12 *Novembris* 1683.—At the Criminall Court, many of thoffe who ware
p. 5. pershued in the late Circuit Court, in June and Jully last, for adultery, perjury, falsehood, &c., (as Alexander Martin in Duncce, against whom the dyet was deserted,) and for harbouring and resetting of rebels, and

who were continued to this day, or bound over upon caution, are now called for; and the Lords had a long deliberation, if they should send the refetters to prison again, or if they should cause them renew their caution. The pannells urged they might be put to a tryall. The King's Advocat declared he had not his probation ready; wheron the Judges resolved to consult the Privy Counsell, and take their measures from them. And the Chancellor having called the Counsell extraordinarily that afternoon to the Abbey, they appointed them to be put under new caution till the King's Advocat got time to consider whom he would insist against, conforme to the last Indemnity on the 20 of September 1683.—This was thought hard, to keep gentlemen from tyme to tyme under an uncertainty, and suspicion of treason, without bringing them to a tryall. There arose some heat on this, betuen the Chancellor and Trefurer; the discord becoming now more publick.

15 *Novembris* 1683.—The Faculty of Advocats their bill to the Lords, No. 15, craving a ratification of our Act, imposing 500 mks. on intrants by examination, and 1000 mks. on those who enter *per saltum* by bills, was read, and opposed by the Chancellor, who was then aiming to bring in Morison of Pitfour his nephew, to be ane Advocat. Our Dean of Faculty the King's Advocat took it very ill. However, the Lords ordained ane Act of Sederunt related to, dated the 28 of Februar 1662, to be produced. (*Vide infra* more of this 21 *Novembris*.) A motion had been made at Court, of granting the Advocats a feall of cause, and a charter with privileges; but it was thought unfit, because they being factious and mutinous, and both learned and popular, they might make bad use of them; and the Lords of Session think it their policy to keep the Lawyers humble, and subordinate to them.

Eodem 15 *Novembris*.—At Privy Counsell, a complaint is given in by No. 16, the Earle of Lithgow against the Toune of Lithgow, that they had fyned Dundas of Manner for a ryot committed by him without their Toune; and Lithgow alledged, This belonged to him, as the Counsell's Shireff in West Lothian. Answered, The Toune by their charter have right and

jurisdiction, and are in use to judge all ryots committed within a mile of ther Toune. This competition was committed to some Councillors.

2^{do}. Mr. George Scot of Pitlochie, pershues Andrew Boswell to give him up a back-bond he had intrusted him with. [Alledged,] This was civill, and no Counsell bufines, but belonging to the Session. Answered, It's a breach of trust. This was also referred to a committee.

3^{tio}. John Milne pershues Macclair, bailzie in Preston, and Robert Seton, bailzie in Tranent, for oppression, and for extorting a discharge of a decreit from him by threats of imprisonment and the stocks. It's admitted to probation.

4^{to}. I am nominat by the Privy Counsell, without my knowledge, to be a Justice of Peace, and one of the Commissioners of the Excise and Militia in Eist Lothian.

No. 17, *Eodem die*.—At Privy Counsell, the King's Advocat insists against Sir
p. 6. William Scot of Harden, and his Lady, for absence from the Church, and for Conventicles. The Lords find Sir William liable and fyneable for his wife's absence from Church; tho the 7th Act of Parliament in 1670, against seperation from the publick worship, does not renew, but *de industria* omits that clause, declaring husbands liable for ther wives, tho it be insert in the very preceeding Act against Conventicles; and that *regulariter per Titulum Codice* it's prohibite *ne maritus pro uxore conveniatur*; and even in civill cases, on dissolution of the marriage, he is liberat of hir debts not constitute against him *stante matrimonio*. And Sir George Lockhart intreated them to take advice of the Session in this point, as being *in jure*; the King, by his letter in Jully 1679, having desired them in the like cases to doe so; and that the going to Conventicles was a positive act which the husband might in some measure hinder, but absence from Church was a negative and lesser kind of guilt, and he could not weell force hir to Church, farder then by persuation. Yet the Lords thought the husband head and *dominus*, and that shee owed that by hir subjection as to be ruled in thesse things by him, and that oft-tymes it was by his tolerance and connivence; and therfor they fyned him in 1500 lb. sterling, (tho he was only a lif-renter,) and declared, If he payed

it not within 15 dayes, then he was to re-enter in prifon in Edinburgh Caſtle again; and ſuperceided to impoſe the reſt of Meldrum's fyne upon him, (*de quo vide* the manuſcript E, page 327) till they ſaw if hir carriage would be better and more regular in tyme coming, and what indevors Harden uſed to perſuade hir.—This was thought a very od ſtretch of the A& of Parliament; but the ſumme fyned in, jumped with a gift the King's Advocat had new gotten of 1500 lb. ſterling from the King, out of the firſt and readieſt of the fynes, for his pains, expence, and journies to London.

2^{do} *Item*, They ſand Harden farther guilty of a Conventicle, wheirat he was preſent, becauſe he confeſt he heard once a licenced miniſter preach and pray in his houſe, (which was not the pariſh wheir he was indulged to exerciſe,) tho ther was none but his oune family preſent at it; wheiras the forſaid A& in 1670, requires at leiſt 4 beſides the domeſticks to make it a Houſe-conventicle.

16 *Novembris* 1683.—In the cauſe my Lord Melvill and Andrew No. 18,
Lundie's bairnes againſt W^m. Hamilton of Wiſhaw, the Lords did not p. 6.
incline to ſuſtain proces at the bairns inſtance, tho they produced a retroceſſion and back-bond from Melvill, (he being alwayes payed of ſome ſummes,) in regard he was out of the country, and no pro&rie from him; unleſſe they would find caution *de rato*. Wiſhaw took advantage, that Melvill durſt not appear ſince the late plot and Monmouth's diſgrace.

20 *Novembris* 1683.—A letter comes from his Majeſtie, ordaining No. 20,
Gordon of Earleſton and Mr. Spence to be tortured in the boots, to ex- p. 7.
tort a diſcoverie of the late deſignes. It was given out, that Earleſton was diſtempered already: and *res fragilis eſt quaſtio, teſte Ulpiano in lege 1 D. de quaſtionibus*.

21 *Novembris* 1683.—The Advocats bill (*de quo ſupra* 15 *Novembris*, No. 24,
pag. 5^t *in caſu*) is laid aſide; and the Chancellor called it ane oppreſſive p. 8.
A&, and deſerving to be reſchinded; eſpecially ſeing it made a difference betuen thoſe Advocats the Lords admitted on a bill *per ſaltum*, impoſing on them 1000 mks., and thoſe admitted by themſelves only 500 mks.

And yet ther may be good reasens given for this distinction and favor, the breeding of thoffe who undergoe a tryall being oft more liberall and worthy. But some of the Lords would have all things arbitrary, at ther ounne dispose.

No. 28, 22 *Novembris* 1683.—Sir Alexander Bruce of Broomhall pershueing a
p. 9. speciall declarator of the fingle escheat of the late Earle of Kincairne; it was alledged, A stock of money he had laid in the Royall Fisherie Company was not moveable to be carried by the fingle escheat, because it was a *jus fixum*, rendering profit like a summe bearing annuelrent, which falls not under the fingle escheate. Yet the Lord Pitmedden fand such a stock simply moveable, and not like a bond upon annuelrent.

No. 31, 22 *Novembris* 1683, *post meridiem*.—At the Privy Counfell, the Laird
p. 9. of Innes pershues, &c., for a ryot, in violent carrieng away of sea-tangle of his land, wher they had no right to gather it.

2^{do}. Ther are mutuall libells betuen Jean Scot Lady Snadon, and David Moody in Montrose: he complaining that shee reviled him as perjured, &c.; and shee alledged that he cruelly beat hir. Both are admitted to probation; but Bailzie Milne was casten from being a witnesse on the parity of the late Act of Parliament in 1681, that he had married the Ladie's neice, tho he was a common witnesse, cited and elected by them both; but David Moody past from him; in which case, I think he should at leift bear his expenses.—*Item*, David was excused from being present, on a bill and a testificat that he was indisposed; and also a commissioun was granted to Erskin of Din, and Falconer of Glenfarquhar, to examine Bailzie Trumbull at Montrose, because by a testificat it was made appear, he had fallen and broken his arme.

3^{tio}. Laurie of Blaikwood, and Laury the proctor of Lanrick, are re-
preived by the Counfell as to the tyme of ther execution, till Aprill nixt.

No. 32, 23 *Novembris* 1683.—The case of Agnes Campbell, and Patrick Tailfer
p. 9. hir husband, against John Reid the printer, being reported by Blair; the Lords advocated the cause to themselves from the Bailzies of Edinburgh,

where he was perswaded for having stollen and abstracted out of his printing houses many types and setts of letters; on this ground, that they had summarily searched his house, and finding some, without cognoscing if they were his own or not, they imprisoned him; and the libell did not bear "as Justices of Peace, or Sheriffs."

Eodem die.—At Privy Counsell, the first lite made for the Dean of No. 34, Gild of Edinburgh was rejected, because not free; and the Magistrats^{p. 10.} ordained to make a new one.—See one chosen, *infra* 30 *Novembris*.

2^{do}. John Weir of Newton is incarcerat, by order of the Committee of Privy Counsell, in respect, by a præcognition taken, witnesses had deposed against him, that he had sent out and furnished one to Bothwell-bridge; tho he alledges, he only sent his wife's naturall brother, to get back a meer [mare] the Whigs had robbed him of. They also examined him, if he heard any thing of the English Plot, because he had been this summer at London. It mitigated somewhat that he had taken the Test.

3^{tio}. Earleston, (conforme to his Majestie's command, *supra* 20 *Novembris*,) being brought to the Counsell-chamber to be tortured, he thro fear or distraction roared out like a bull, and cryed and struck about him, so that the hangman and his man durst scarce lay hands on him. At last he fell in a swoon, and then reviving, he told that Generall Dalziel and Drummond were to head that Phanatick party, and Duke Hamilton was on their syde; which improbable things made some call it revery; and others, a politique designe to invalidate all he should say; and the physicians were ordained, upon soul and conscience, to report his condition, if they judged him really mad, or only feigned, as David at Gath with Achish, as also to prescribe his dyet for curing him; and for more quietnesse, they sent him to the Castle.

30 *Novembris* 1683.—Mr. Hary Oliphant, clerk to the acts of Law- No. 40, borrows and allowances of compyings, being discharged, by Mr. John^{p. 13.} Wedderburne of Blacknesse, clerk to the Bills, to officiat their, he gave in a bill to the Lords, complaining of it. They referred it to my Lord Carse to hear them; who reported the debate, viz., That he was only a

fervant, and during pleasure, and so removeable; that the principall clerk was accountable for all under him, and so should have the disposeall of them, feing ther errors may indanger him. Answered, He had a gift from Sir W^m. Bruce, and ratified by Sir James Enstruther, and so, without proving malversations, they could not summarly turne him out. Replyed, Sir W^m. Bruce and Sir James Enster's deputations to him, (especially they being but the Register's deputes themselves, and so could not delegat,) ended with themselves. The Lords, on Carle's report, (notwithstanding the Clerk Register's moyen that day, who was removed the time of the voting,) ordained Mr. Hary to continue still in the exercise of his place, but allowed Blacknes to goe on in a reduction or declarator against him upon malversation, or other grounds, as he thought fitt. —The under clerks of Session ware very glad at this interlocutor, for the contrare would have bein a preparative for them to compone with every master that came in above them, tho they had payed largely at ther first entry.

2^{do}. Yet, upon a bill given in by Mr. Wedderburne against Hary Oliphant, on the 1 of December, bearing the grounds he went on, and that Hary being a member of the Session was oblidge to answer summarily on a bill, the Lords receaved his grounds *hoc loco*, and in the mean tyme, during the dependance, desired Mr. Oliphant to forbear exercising. Then they altered this, and ordained him to find caution beyond exception for his fidelitie in the office. The Register procured this turne to force Oliphant to compone and give something. William Eccles is in the same case as to the place he had bought in the Bill-Chamber from Sir James Enster.

No. 41, *Eodem* 30 *Novembris* 1683.—Three Clidisdale men, out of the parishes
p. 13. of Monckland, Lefmahaigo, and Dalserfe, viz., one [John] Cochrane in Strathaven, [John Whitelaw in New Monckland, and Arthur Bruce in Dalserfe,] are hanged at the Crosse of Edinburgh, for being at Bothuel-bridge, and disowning the King's authority, and calling him a tyrant, and refusing to say, "God save the King," tho a reprieve was offered them if they would doe it.

2^{do}. The Magiftrats of Edinburgh, by vertue of the power given them *supra* by the Privy Counfell on the 23 of November, meit this day, and make a lite for a Dean of Gild, and out of it choifes Charles Murray. Sir Robert Baird aiming at it.

Item, This being St. Androis day, it was the anniverfarie meiting of the Royall Fifching Companie.

1 Decembris 1683.—On a bill given in by the Lady Monteith againſt No. 43, the Earle, who was perſhuing a divorce againſt hir before the Comifars p. 14. of Edinburgh for hir adultery, and offering to prove it by weemen witneſſes, and thee complaining of this as illegall; the Lords, on the Register's report, ordained this point to be heard in their oun preſence, If weemen could be received as habile witneſſes *in cauſa matrimoniali ad ejus diffolutionem*. (*Vide infra* more of this, page 25, *et ſeq.*)

6 Decembris 1683.—At Privy Counfell, fundry of the burgeſſes of No. 46, Edinburgh, who ware for themſelves or ther wives abſences from the p. 15. Church, or for private irregular baptifmes, fyned the laſt winter by the Proveſt in conſiderable ſummes, amounting neir to 20,000 lb. Scots, preſent a bill of ſuſpenſion of triple-poinding, 1^o. Againſt the Hy Treafurer, and Hew Wallace the King's Caſh-keiper, claiming the fynes of all ſuch as ware heritors, conforme to the A^cts of Parliament made againſt theſſe delinquences and conventicles in 1670 and 1672, appointing the fynes of heritors tranſgreſſors to come in to the Treafury. 2^{do}. Againſt Sir James Fleeming, late Proveſt of Edinburgh, claiming to himſelfe *jure proprio* the fynes of all beneath heritors, as being then Shireff-principall. And 3^{tio}. Againſt the preſent Magiftrats of Edinburgh, who alledged they belonged to them, to be applyed to the publick uſe of the Toune. It was contended for the King, by his Advocat, that *pœnarum multarumque compendia* are *inter regalia* and the King's *jure coronæ*, except in ſo far as he by himſelfe alone, or with the Parliament, gives them away to his ſubjects. (See Craig, *Feudorum, libro 1, Diegeſi ultima*, page 117.) And that the A^cts of Conventicles, &c., expreſſy reſerves to the King the fynes of all heritors; and that *propriſſimo loquendi modo* landlords within

brughs ware heritors being infest, and that infest and heritor ware *termini convertibiles*. Answered, That the Parliament had not respected landlords in brughs by thesse Acts as heritors, but only as merchands and tradsmen having personall estates, and put them expresly in a contradistinction from heritors, and classed them differently; and had not imposed ther fynes conforme to ther valued rents, (for that in small landlords, as of a booth paying 20 lb., would be elusory.) And wheiras it was pretended that Sir James Fleeming had right, because Magistrats ware classed in with other Shireffs and Lords of regality by the Acts, and that *determinatio relata ad plura determinabilia, omnes æqualiter determinat*. It was answered, Magistrats ware not like heritable Shireffs, or for lyfetyes, but meer curators and administrators; and by the famous Decreit-arbitrall of King James the 6^t, cap. , all unlaws are appointed to be applyed to publick uses; and by the Toune of Edinburgh's charter in 1616, ratified in the Parliament 1621, ther is a speciall clause annexing and incorporating all mulcts, amerciaments, and fynes to the common good of the brugh. Replyed, This can extend only to mulcts imposed by Acts then made and in being, and not to thir late pœnall laws. The Privy Counsell, after a warme debate betuen the Chancelor and Treasurer's faction, found the King and his Cash-keiper had right to all fynes of such landlords, wheir ther fynes did exactly quadrate to that proportion of the 8^t or 4^t part of ther stent for ther lands within brugh, as is imposed by the Acts; and for all the rest, whither heritors or not, fand, by the Toune's charters, they belonged not to the Magistrats themselves for ther oun use, but to be applyed by them for the necessarie uses of the Toune; and that Sir James Fleiming had no right, farder then a deduction and allowance for his charges, pains, and trouble, in pershueing them, and obtaining decreets, with ane farder incouradgement and gratification for his diligence, to invite others to execute thesse pœnall laws, to be modified by the Counsell. It was thought, it would have been juster to have caused the Cash-keeper give in a condescendance of all thesse burgesfes fyned who ware heritors, and what ther rents ware within brugh; and so far as the fynes imposed on them quadrated with, and corresponded to, ther proportion of valued rent, that the same should belong

to the King ; but the superplus of the said fyne, in so far as it exceeded that, to goe in to the use of the brugh.

2^{do}. Nixt day, being the 7 *Decembris*, Sir James Fleeming gave in a bill, founding on the King's letter to the Privy Counsell in July 1679, desiring them in civill cases to remit the same to, or advise with, the Session ; and therfor he craved this competition might be referred to the Lords. This was refused, and they adhæred to the former Interlocutor.

Eodem 6 Decembris 1683, post meridiem.—At Privy Counsell, they No. 47.
named the Lord Leviston to be provest of Lithgow, in regard of Alex-^{p. 16.}
ander Milne ther former provest's negligence in executing the ecclesi-
asticall laws. This is expresse contrare to the [8th] Act of Parliament in
1609, ordaining only actuall trafficking merchands to be admitted as
Magistrats of burrows.

2^{do}. A printed relation of my Lord Argile's proces and plea, with the
King's Advocat's answers, (which are treated in ridicule as contradictions
to themselves,) is, by order of the Privy Counsell, brunt by the hand of
the hangman.—*Item*, A printed Vindication of himselfe, characterizing
our Statesmen and the Bischop of Edinburgh, is also ordained to be pub-
licly brunt, as ane infamous libell.

10 *Decembris 1683.*—At Criminal Court, many of the gentlemen who No. 49,
in the Circuit were pannelled for refetting and conversing with rebels,^{p. 17.}
and ware liberat on caution to appear this day, are called for : And as to
some the dyet is simply deserted ;—a 2^d rank, they enact themselves only ;—
a 3^d, find caution to appear when called *sine die*, (to let them sleep away.)
Others, according to ther degrees of guilt, find caution to appear the first
Munday of Aprill nixt ; but [James Young ?] chamberlain to the Marquis
of Douglas is sent to prison.

13 *Decembris 1683.*—This day, at Privy Counsell, was made publick the No. 53,
King's letter about the Juncto, commissionating his 7 great Ministers of^{p. 17.}
State to manadge all affairs heir : they ware the Earle of Aberdean,

Chancelor ; Queanberry, Hy-Treasurer ; Perth, Justice-Generall ; Athol, Privy-Seall ; Lundin, Treasurer-Depute ; Tarbet, Clerk-Register ; Sir George Mackenzie, King's Advocat ; and the Secretary, if in Scotland. So only Maitland, Justice-Clerk, of all the Officers of State, was omitted, and the Justice-Generall, who is no Officer of State, put in his place. Some thought, the Duke of Monmouth's returning in favor at this tyme had procured this. But the Dutchesse of Portsmouth had obtained it before that ; and they had represented to the King and Duke of York, that it was nather safe to the Governement, nor pleasing to the nobility, that all the representations of our affairs should come by one channell, viz., the Chancelor only. But it was wondred, how the Duke of York suffered him to be yoked so unæqually, as to joyne with him 6 of a contrare faction, who had all aimed to put him out ; (see the cause of it in my folio Historick Manuscript, in the moneth of September 1683, and May, June, and Jully, 1684, page ;) unlesse it was that they might be checks mutually one to another ; but then the ballance should have been more æqually poized. The Juncto, and Committee of Safety, ware words invented in the rebellious tymes ; and therfor they shunned thesse termes, and called themselves the Secret Committee. They are as the Articles to the Parliament, so to be a preparatory Committee to the Privy Counsell, to mould, forme, and prepare matters ; so that the rest of the Counsellors will have litle more to doe save to ratify ther conclusions, (as the Exchequer sayes Amen, to what the Treasurie does.) Ther is nothing to be proposed in Counsell, and no account of affairs, or recommendations to be transmitted to the King, but by them ; that one fingle man may not abuse him, by misrepresenting and undermining others. Some compared them to the 7 Presbyterian and Independent English ministers, nicknamed the *Smectymnuus*, or to the *Septemviri Electores in Imperio Germanico* ; or to the Octavians, whom King James the 6^t, in 1595, used for a while, till ther governement turned heavy and odious to the country : (see it in Spotswood's Church History of Scotland, page 412, *et seq.*) Duke Hamilton called it a Side-bar Counsell. Some termed it a Commission of Chancery, giving the Chancelor 6 assessors to help him, and make his work easy.

Eodem 13 *Decembris* 1683.—Ther is a letter from the King to the Chancellor, stopping the procedor against the Earle of Lauderdale on the decreet of the Mint, till the 15 of Januar nixt; and recommending to Claverhouse and him to agree about Dudhope and Dundy; and each of them to nominate 2 Privy Counsellors to endeavor ane accommodation betuen them. No. 54,
p. 18.

2^{do}. Earleston is repreived by the Counsell to the last Friday of Januar nixt. They thought once to have given way to his execution; but being furious, others judged it cruell then to bereave a man of his life, and in-danger his soul, when he could not repent; and l. 14, D. *de officio præsidis* sayes, if it be not *simulata dementia*, *satis ipso furore punitur*. Tho the King's Advocat alledged, That the end of the punishment of malefactors, was not only ther oune good, but *in emendationem et terrorem aliorum*; which end held even in decapitating a traitor, tho from horror and fear turning mad. Yet see his oune Criminalls, *lib. i, cap. 2*, wher fury excuses.

15 *Decembris* 1683.—The Dean of Gild of Edinburgh discharging the Creamers to sit within the Parliament House, feing ther ware severall chops standing empty within the toune, whither they might remove; the Lords, upon a bill, continued ther possession till farder order; and that some of the Lords' number might meit with the Magistrats their-anent. No. 56,
p. 18.

19 *Decembris* 1683.—Some letters of the late Earle of Argile being intercepted, and sent down by Major Holmes and West, discoverers of the Plot; and they being referred to his Lady for the key of the chiphers and figures wheirin it was written, as thus, "If 16 will not doe it, then 10 will," &c.; and shee being cited to the Privy Counsell, deponed, That hir husband used, ever since his affair with the MacLeans about the Isle of Mule [Mull], (who laid wait for his letters to know his designes,) to write to hir and his freinds, even of his private affairs, in ciphers; and that shee had a key; but upon the breaking out of the English Plot, shee judging such a way of corresponding dangerous, and liable to suspicion, shee brunt

it four moneths ago ; and that shee cannot read nor expound them ; but that all the letters shee got, (so shee acknowledges corresponding, which in a wife from a traytor husband is in stri&t law still criminall,) contained nothing of the Plot, but anent his oune private affairs, and his freinds ; and it ware a very cruall law, if a wife ware oblidge to dete&t and reveall thesse.

2^{do}. The Jun&to ware not satisfi&yed with hir answers, as disingenuous to ther thoughts : Wheirupon they in all haste sent for Mr. George Campbell in the Cannogate, and one Gray of Creich in Angus, who can read such ciphers.

3^{tio}. *Eodem* 19 *Decembris*.—The Town Counsell of Edinburgh make ane Act, offering 5 lb. sterling as a reward to any who shall discover a Conventicle within ther brugh.

No. 64,
p. 23. 20 *Decembris* 1683, *post meridiem*.—At Privy Counsell, ther ware two libells or complaints against Sir James Rocheid, Clerk of Edinburgh : The first was at the instance of the Magistrats and Ministers of Edinburgh, as trustees for Heriot's Hospitall, and James Kirk treasurer of that Hospitall, against him for his sacriligious removing march stons set betuixt his lands of Innerleith and the Hospitall's ground adjacent to him ; and building a house within ther march ; and appropriating a hauch belonging to the Hospitall, as if it had been his oune, and turning over the channell of the Water of Leith upon another of ther haughs, and theirby rendring it uselesse throw sand ; and also for filling the said water full of greit heaps and mounts of earth, which being carried doune in speits, both wronged the Cannomilnes below it, and the mouth of Leith harborie, (which is the cheiff port of the kingdome ; and *portus* are placed *inter regalia* by Craig, *titulo ult. lib. i.* page 112,) and hath filled it with sand. Sir James raised a reconvention, denying the removeall of the march stons ; (*vide Tit. Dig. de termino moto* ;) and alledging the haughs ware his oune property ; and that the lairds of Innerleith had in 1659 a milne dam throw them, and that his mots of earth did no prejudice to the water, it's naturall use being to convey away the filth of the earth ; (see Mackenzie's first Pleading, Hayning and the Toune of Berwick ;)

and that in so long a tract, and the meanders of the water, it could doe no more hurt to the milnes and harbory of Leith, than the muir-burne of Scotland did by a chimæricall phancie to the Wines of France; and he produced declarations under Balmerino's miller's hands, that they disclaimed the pershuit, and fand no prejudice done to ther milnes. He also complained upon the Magistrats of Edinburgh, ther oppression in hindring him to decore and improve his oun property as he pleased; and that Bailzie Fairholme had contumeliously and ungentilely called his wife a lurdain and truiker. The Privy Counsell fand the libell relevant, and admitted it to probation; and named Colinton, Castlehill, and Abotshall to make a visitation on the ground of the lands, and to examine witneses on the points of the libell, and to report.

2^{do}. The 2^d complaint against Sir James Rocheid was by one Arthur Straiton, (by the old laws of *Quoniam Attachiamenta*, cap. 25, a man should not be pershued for 2 causes in one day, only it is meant at one partie's instance,) for wrongous imprisonment, in so far as he had given him a *supercedere* under his hand in writ, not to put his caption in execution till Thursday night, and yet he imprisoned him on the Wednesday before. Sir James alledged, That the suspension was conditionall, (but his note boor no such thing,) that in case he brought him not a sufficient cautioner before Tuesday night, he might proceed; and he denied his subscription of the *supercedere*, it wanting witneses; and that before this libell was raised, he had a declarator depending before the Session that the imprisonment was legall. Tho the ryot was clear, yet the Counsell ware pleased to remit it to the Session.

Eodem die.—At Privy Counsell, Daniel Hamilton, Quaker, and over-
fier of Sir Walter Seton's coal and salt works, conveys Sir Walter for the
ryotous breaking up the door of a girnell, wher the said Daniell had
400 bolls of meall lying. Sir Walter alledged, It was to get access to
some meall of his oun ther lying, Daniel having maliciously refused
the key, under pretence that the other meall was also assigned to him
for his releiff of cautionries for Sir Walter; and it would have made
his workmen leive him if they got not out ther 16 bolls of meall each 14

No. 65,
p. 23.

dayes. The Lords ordained Daniel to be reponed and reposselt, and then appointed both parties to count, before the President of the Seffion, who was debitor to other.

2^{do}. Sir John Shaw of Greinock pershues Crawford of Cartburne for a ryot committed on his fischers: both of them have tounes and good harbours in Clyde-mouth; and each of them invyes and prejudges another all they can. It's admitted to probation.

No. 66, 22 *Decembris* 1683.—Morison of Bognie having in passion called Mr.
p. 24. George Alexander advocat a cheat, he complains to the Lords of Seffion, and leads Mr. Robert Colt and another, who heard it, witneses; and on this probation, the Lords ordains Bognie to crave him pardon in ther presence, (to the intimation of which they called in all the Advocats,) and to pay 100 mks. of fyne to the poor, and to ly in prifon during ther pleasure: but he absented himfelfe. (See the like case in Stair's Decisions, 14 Jully 1668, Mr. David Falconer againft Sir James Keith, page 552. In England, upon fuch complaints, a man gets fome part of the fynes to himfelfe, as we fee in the pershuits lately made on the ftatute called *scandalum magnatum*, which ware juft to be introduced also with us.)

No. 68, *Eodem die*.—A letter from the King to his Seffion is red, bearing that
p. 24. when his Committee of the Counsell or Juncto (*de quo supra* 13 *Decembris*, page 18) fhall in points of law call for ther opinion *in jure*, the Lords may be oblidge to give ther advice and judgement to them.

No. 68, This 22 *Decembris* being Saturday, was the Seffion's laft fitting day
p. 24. before the Zuille Vacance.

No. 69, 24 *Decembris* 1683.—At the Criminall Court, Thomas Brown is pannell-
p. 24. ed by the King's Advocat, and James Nicol, smith in Lanrick, and others, the neareft of kin of umquhile Hew Nicolson, ferviteur to the deceaft Sir Archibald Primerofe, for killing him, at leift for giving him a mortall ftroack on the head with a ftone in his falded neive, wheirof he dyed after

6 moneths pining away. Thomas raifed ane exculpation on thir 2 heads, 1^o. Any ftroack he gave (alwayes denying it) was in felfe defence, Hew and his complices being the firft aggreffors and provokers in drawing him from his horfe. 2^{do}. The wound given was not lethall nor *caufa mortis*, feing he lived more then 6 moneths after; and it's offered to be proven by the phyfitians and chirurgians that waited on him, that he dyed of a phthifis or confumption and a fifula he had before the ftroack; (yet in Mr. William Somervell's cafe in 1669, he was found *reus homicidij*, tho Bessie Renton whom he ftrocke, lived 8 or 9 moneths after, and feimed to have dyed *ex malo regimine*, feing he had not offered to cure hir.)—The pannel having agreed with the neareft of kin, and by way of affythment and compofition, given them 2000 mks., the dyet was deferted *simpliciter*; only one Brown a chirurgian, who had got ane affignation to the affythment from the defunct in his lyfetye for payment of his drogs, protefted againft it. This will not hinder; but the King's Advocat alone (tho the kinfmen be laid afide) may afterwards infift *ad vindictam publicam*.

26 Decembris 1683.—Joseph Johnfton of Hilton is killed by Mr. William No. 69,
Home, brother to my Lord Home: fee it in my Historick Manuscript. p. 24.

CHRISTMAS, OR ZUILLE VACANCE.

INCIPIT ANNUS 1684.

No. 70,
p. 25.

1 & 2 *Januarij* 1684.—The Bill of Advocation, presented by the Countesse of Monteith against hir Lord, (*de quo supra pag. 14,*) was this day debated in presence, and decided against hir: for the Lords fand the Comisars had done no wrong, and therfor allowed them to take weemen as witneses in the divorce to prove hir adultery, providing they be of integrity, and above all exception; and therefor remitted it back.—The Comisars registers ware fought, and about 50 proceffes of divorce ware found recorded since the Reformation of religion, (I beleive none will doubt but ther hes been mo adulteries then 50 since that tyme,) and in none of them ware weemen adduced as witneses; which, tho a negative argument, yet concludes this much, that ther can be little necessity urging us now to allow such a probation, which hes not been used in 120 years space. And tho the *edict de testibus* be *permissorium*, admitting all, except such as are fecluded and prohibited; yet we can subsume that weemen are rejected *a testificando* with us, cap. 34, *Statuta* 1, *Roberti I.*; and Craig, *lib. 3, Feud. dieg. ult. pag. penult. in calce*, shews our masculine nation hath alwayes reprobated the testimony of weemen witneses; in this imitating the feudall law. . . Weemen among the Romans ware repelled *a testimonio dicendo in divortiis*, which was *actus legitimus et solennis* with them; and this comes precisely home to our case in hand. The canon law does also expressly debar them as inhabile witneses. . . See also Mackenzie's Criminalls, title Adultery, for that point, that Monteith, ere he can obtain a divorce, ought to prove the marriage. By the old Roman law, weemen ware repute *in perpetua tutela*, and so ware no more admissible then pupills; which yet holds *Jure Saxonico*:—*Causæ Matrimoniales sunt causæ graves, et in jure æquiparantur causis criminalibus*. The dissolution of a marriage is a cause drawing much fatality and scandall after it, and so, in the opinion of all lawyers, cannot be proven, but *per testes omni exceptione majores*. . . Let not weemen become masters

of our lives, nor of our honors, and reputations, which is yet dearer to us.

1^o. Modesty and shamefastnes debars them. 2^{do}. The œconomick imployes within doors is eneugh to take them up. 3^{tio}. Ther passions of love, anger, hatred, revenge, are high and boiling, and ready to transport them to great extremities, and may be induced to depone against ane innocent lady, on the hopes to succeid hir in hir nuptial bed.

2. The nixt day a petition was given in for Rosse of Auchlossan, (who was named in the libell as one of thesse whom with shee had perpetratt the adultery,) craving the Lords would explain whom they meant by witneses above all exception; and that the Earle might be ordained to prove his marriage with the Lady, ere they could infer adultery with hir against a 3^d party, (whose Lady was also interessed to see him vindicat :) this was refused; for cohabitation was thought eneugh, and being *habitus tentus et reputatus* hir husband. Yet the Lords recommended to the Comisars to notice thesse points.

1 Januarij 1684.—The Privy Consult and Caball or Juncto of the No. 71, Counsell met on Argile's letters, (*de quo supra* 19 Decembris,) and have^{p. 27.} got Gray of Creichie, and Mr. George Campbell to decipher them. They first touched the Earle of Balcarhouse, as he who was touched with the hieroglyphick of D, and 43 above the head of the D, and of F 75. When the Lady Argile fand hir ounie son thus touched, shee then said, that shee now remembred that D (43) was only a relative particle in the key betuen hir husband and hir, and so meaned the L. M. (Lord Maitland), immediatly mentioned before; which inferred against him, that he was corresponding, and receaving letters from Argile, a traitor. The Juncto upon this sent about the Earle of Lauderdale, and sent with him Captain Grahame, and Sir William Paterfon their Clerk, to seall up all my Lord Maitland his sone (then at London) his papers, truncks, and cabinets, till they should fight them. This was done in odium of the Chancellor, because Maitland was now upon his fyde, and had affisted him to weather the last attempt. And so, though this can be no probation in law, yet by this Maitland will be represented to the King as unfit to serve him.

No. 74,
p. 27. 3 *Januarij* 1684, *post meridiem*.—At Privy Counsell, the Lady Snadon's probation (*de quo supra* 22 *Novembris*, pag. 9) is advifed, and the ryot found proven, and he fyned in 300 mks. as an affythment to hir.

Item, Mr. Antony Shaw, and another indulged Non-conformift minifter, are called for not reading the King's declaration againft the plot on the 9^t of September laft, and for converfing with and refetting rebels, and for preaching in a church-yard, which is the nixt ftep to a field-conventicle. The Counfell filences them, and difcharges them to preach, under the pain of 5000 mks. ; and if they find not caution to obey this, they are ather to ly in prifon, or to be banifhed, in ther option.

No. 76,
p. 27. 4 *Januarij* 1684.—A new letter comes doune from the King anent Argile's eftate, (fee the former one in the manufcript E, in September 1683, page 330,) wheirin he declares he will not alter what he had appointed, anent the payment of Argile's children's portions, feing ther was a *jus quæfitum* to them by his former gift, now paft under the Great Seall ; (which the King could no more take away then any gift of efcheat or other cafualty ;) but as to the creditors, he altered the method this far, that with the Lords of Seffion he appointed ther diligences to be confidered by the Treafurer and Treafurer-depute, and they to rank them accordingly, and to give them the lands, to be redeimable from them by the King at 18 years purchafe.

No. 83,
p. 29. 10 *Januarij* 1684.—In Mr. James Keith's action and Sir William Purveffes (*de quo supra*¹). The Lords examined Sir George Lockhart, Sir John Dalrymple, Mr. David Dewar, Mr. George Bannerman, and the Earle of Marfhall's other Advocats, what they knew of the Earle of Marfhall's trufting that comprifing in Mr. James Keith's name ; yea, what they beleived in ther private judgement to whofe behoof they thought it : which was to caufe them depone on ther fancy and opinion. But it was judged not convenient to fhreud themfelves under that priviledge of Advocats *ne teneantur fecreta clientum detegere*, feing this was the

¹ See the case reported in Fountainhall's printed Decisions, vol. i. p. 252.

detection and expiscation of a fraudulent convey, which it is not Advocats credits ather to advise or to conceall. Mr. D. Dewar discovered all: that it was for the Earle's behoof, and that he was against the acquisition of it. But Sir William Purvesse went farder, That some of the Lords on the bench, who knew of this affair when they ware advocats, would so far exoner ther conscience and bear witnesse to the truth, as to informe the rest of the Lords what they heard of it. In this he meant the Chancellor and Kemnay, with whom Marshell had advised how Mr. James Keith's right might be taken; but they say Marshell added, If one most have that apprising, I am as weill pleised it fall in Mr. James Keith's hands as in another's.

Eodem 10 Januarij 1684.—At Privy Counsell, one James Hill, a No. 84, skipper in Queanfferry, pershues one skipper Dauling ther for a ryot: ^{p. 30.} it's admitted to probation.

2^{do}. Mr. David Hay, the Earle of Tuedale's son, and his man Alexander, pershues Bailzie Strauchan for a ryot, in imprisoning his man, and using uncivill carriage to Mr. David himselfe. Admitted.

Eodem 10 Januarij 1684.—The King's Advocat pershues, at Privy No. 85, Counsell, Mr. John Wause and Arthur Woodney, the 2 keipers of the ^{p. 30.} Tolbuith of Edinburgh, and Sir James Fleeming, and the late Magistrats, against whom he insisted for ther personall fault, in suffering Mr. John Dick and [Edward] Aitkin, condemned traitors, and others, to escape out of ther prison in September last, (for he past from his conclusion against the present Magistrats and the toune.) It was alledged, The escape could not be charged on them, ther nather being *dolus* nor *culpa*, but meirly *casus fortuitus et improvisus, et vis major*, in cutting the stanchels with fyles and with ane oyll; which in 20 cafes before, the Lords of Session hes affoilzied Magistrats and keipers when pershued *subsidarie* for the debt. (See Stair's Index of his new printed Decisions, *voce* Magistrats; *item*, Durie's Index *ibidem*.) The King's Advocat answered, They ware liable, 1^o Because the prison could not be sufficient wher they could cut the iron grates so easily. (Yet it is informed that

thir fyles, with the oyll and *aqua fortis*, will cut thro a goad of iron in ane hower or tuo's tyme, without much rifping or noice, which is very ftrange.) 2^{do}. By the laws of all nations, malefactors, efpecially traitors, condemned to dy, are after fentence keiped in irons, and fo the keipers ware *in culpa* not to have them chained. And Lundy, Treafurer-depute, declared, that in England the man of the greateft quality condemned, hath it in his option from the keipers of Newgate, the Tower, &c., ather to ly in irons, or to redeime it with a fumme of money; and then the keiper takes his efcape on his oun perill. But how did Lundy keip my Lord Argile when he efaped out of the Caftle? 3^{tio}. The centinells and toune's guards fhould have ftood ther over againft the prifon windows, and not have removed fo early as 4 o'clock of the morning; and the Magiftrats having the power of that company, muft be liable for ther negligence. And tho in civill cafes fuch an accident as this may excufe jaylors from the debt, yet it cannot excufe in the efcape of malefactors and traitors, who are now fculking up and doune the country, poifoning the peeple with ther rebellious principles. Replyed, The prifon is moft fufficient, elfe ther is none in Scotland fo, for who can fence againft fuch artifices as fyles, &c.; and if yee allow prifons any windows at all, (which ware *squalor carceris* indeid to deny,) then this may be done without the leaft fault or acceffion of the keipers. To the 2^d,—The humanity of our laws and cuftomes hes never keiped condemned perfons *in vinculis*, but rather *in liberiore carcere*, unleffe ther was a warrand from the King's Advocat, Counfell, or Criminall Court, to put them in the irons; and the granting a warrand imports it's not to be done without it; and how came Argile to efcape out of the Caftle after condemnation? he was not in irons, nather is Blaikwood, Monkland, &c., in irons, tho condemned for treason; and ther was a warrand for Earlefton's being put in the irons. To the 3^d,—The Magiftrats have not the command of that guard in the toune, being in the Privy Counfell.

The two factions in the Counfell ware much divided in this cafe, yet the Treafurer's party prevailed; and they inclined to repell the defence of the *vis major et casus improvisus*, and to find the prifon infufficient. But for cooling ther animofities, it was laid afyde till the nixt Counfell day.

2. Then they resumed it on the 17 of January 1684, only by one vote supernumerary, they repelled the late Magistrats defences: and then stated the quæstion, If the censure should be only a reprimand, or a fyne? but it carried a fyne: only the determining how much it should be, and the pronouncing sentence, was delayed till the nixt Counsell day.

Eodem die.—At Privy Counsell, a bill was given in by Ogilby of No. 86, Logie, craving a præcognition anent the circumstances and manner of^{p. 31.} his killing Alexander Lesly, agent and wryter, in Aprill last; but he was hyly provoked to it, in so far as Logie apprehended that Lesly had debauched his wife; for Lesly had made Logie's lady beleive that hir husband had the French pox, so that shee refused to bed with him; and that Lesly discharged the first pistoll at him. This was in order to a recommendation to the King, to get him a remission for the slaughter. But the Chancelor and others opposed him, alledging he way-layed him, and then proditoriously murdered him.

12 *Januarij* 1684.—The Lord Maitland is put under arrest at London, No. 91, and his papers seached, (*vide supra* this, 1 *Januarij* 1684,) by a warrant^{p. 33.} from the King; because he had gotten information, by letters from the Juncto, that Maitland was touched in the disciphering of Argile's cryptick letters.

14 *Januarij* 1684.—A Privy Counsell is called extraordinary, upon a No. 92, letter written by Lockhart of Lee to the Chancelor, telling him, that some^{p. 33.} of the Whigs beside Lanrick had broke in upon a stable wher some of the dragouns horses stood, thinking to have murdered themselves; but missing them, killed 2 of ther horses; and carried out of the magazin all the straw [that] was laid in for the troupers horses. Wheirupon Meldrum was ordered to goe to that country to repress them, leift they should draw to a head.

15 *Januarij* 1684.—The affair of the Dutcheffe of Lauderdale against No. 93, the Earle of Lauderdale was reported by Edmiston; and the Lords fand^{p. 33.}

hir factory (for thee was out of the kingdome *animo remanendi*) to the deceast Edward Masters, and Hew Rose, yet alive, was not sufficient, the witnesses not being designed in the body conforme to the [5th] A& of the late Parliament held in 1681; and would not sustain the offer made by the Dutchesse's proctors, to produce a valid factory *cum processu*, within 2 weeks, but *ante omnia* required one.

No. 99, 17 *Januarij* 1684.—The competition betuen Alexander and Charles
p. 34. Maitlands the Maiffers, and Roderick Davidfon, who had got a posterior gift of it from the King, as vacand by the deprivation of Alexander Maitland the father from all offices, upon the Mint-decreit, being reported by my Lord Carfe: the Lords recommended it to 2 of ther number to indevor a fettlement. In this proces, Charles Maitland gave in a declinator against my Lord Register, that he should not vote, because he was the only person that by his moyen had procured that gift to his man Rorie Davidfon. Charles having alledged, He was conjunct *dominus* of the place with his father, and on his deprivation, his right stood good; it was answered, That they could not be both *domini in solidum per legem*, 3^{iam}. § 4, 5, et 6, *D. de acquirenda et amittenda possessione*, and so the possession could not be both in the father and in the sone.

No. 100, *Eodem die*.—In a debate betuen Gibson, minister at Auld-
p. 34. hamstocks, and , minister at Cockburnespath, the Lords, as to the possession of vicarage and teynd herring, sustained a decreit as a sufficient probation, tho the other Minister claiming right was not at all called theirto.

No. 101, *Eodem die*.—The four Comifars of Edinburgh pershues the Arch-Bisshop
p. 34. of St. Androis and the Bisshop of Edinburgh for paying the locality imposed upon them, when the faids Comifars in 1609 quate the Confirmations of the great Testaments throw Scotland to the respective Diocesian Comifars, viz., 606 lb. Scots. The question fell in betuen the 2 Bisshops. St. Androis alledged, The Bisshoprick of Edinburgh was in 1633 erected out of his See, and with this quality, that the Titular Bisshop of Edin-

burgh should releive him of a proportionall part of that contribution money, and that by a decreit arbitrall in 1670, the Bifchop of Edinburgh's proportion was declared fould be the halfe, viz., 303 l^b.; and that this Bifchop's predeceffors, viz., Wifeheart and Young, ware in ufe of paying it 13 years; which was *triennalis et decennalis poffeffio*, and fo was fufficient to liberat the Arch-Bifchop, a churchman, from that proportion. Answered, for the Bifchop of Edinburgh, That the quota and proportion of the halfe impofed on his See was too great, confidering the waft difproportion of the 2 Bifchopricks rents; and he denyed the Comifars ware in poffeffion of it; but *eflo* his predeceffors had payed it, they being but adminiftrators of the benefice, that cannot prejudge him. Replyed, His erection is burdened with a proportion; *et ex § 1, Institut. de focietate*, wher the parts are not defined *præfumuntur effe æquales*.—The Lords on this debate in the Inner Houfe found there was due to the Comifars of Edinburgh betuixt the two, 606 l^b.; but before answer, what part of this fould be payed by the Bifchops of Edinburgh, they ordained probation to be led of the Comifars poffeffion, and ther getting payment from the preceeding Bifchops of Edinburgh, and how long, if the lenth required by the forfaid *regula cancellaria*; *Item*, How much of the revenue and patrimony of St. Andrews was difmembred and taken of and incorporat into the Bifchoprick of Edinburgh, that they might theirafter confider if the æquall divifion of the totall 606 l^b. betuen them was juft and rationall.

Eodem die, post meridiem.—The ryot committed by Dauling againft No. 102, James Hill, (*de quo fupra*, 10 *Januarij*,) being advifed and found proven, ^{p. 35.} they fyned Dauling in 300 m^ks., and fent him to prifon till he payed it.

2^{do}. *Item*, The affair againft the Toune of Edinburgh for the prifoners efcape was tabled. (*Vide fupra* of it, pag. 31.)

Eodem die.—The brughs of Eafter and Wefter Kinghorne, *alias* No. 103, Bruntiland, give in a libell to the Privy Counfell againft the Toune of ^{p. 35.} Kirkcaldy, craving to have them prohibite from keiping any ferry or paffage boats betuen ther Toune and Leith, feing they are nowayes a

secure port for taking in men and horses, nor are they furnished with so good boats as the pershuars, but the King's subjects are oft in hazard, and many times drowned; and that ferries are *juris publici* and *inter regalia*; and that Craig *feud. lib. 1, dieg. ult. pag. 118*, reckons *angariæ seu parangariæ prestationes navium inter regalia*; and if the King had his militia forces to transport in haft, Kirkcaldy could not serve him, but only they, and *jus portus non cuivis competit*. Answered, That Kirkcaldy is a Brugh royall, and by its situation, lyes on the sea, and so naturally accommodat to serve passengers, and the liedges are best judges of their own conveniences, and ought not to be restricted, and the more passages the better; and for goods and merchandize, if they be landed at Bruntland or Kinghorne, no cart can well draw them up that steep path and brae near Kinghorne; for they dip so deep in the sand, and they have no other way to serve the east parts of Fyffe, if Kirkcaldy were prohibite. And tho the 20 A& 3^d Parliament James 3^d, and the other Acts relative, only name Kinghorne and not Kirkcaldy, (this would exclude also Bruntland, tho it be also called Wester Kinghorne, and all the other sea townes ther,) yet these Acts doe not containe a full enumeration of all our ferries, nather can it exclude others who have been in possession near præscription, of boats, not only for transporting and carreing of goods, (which is common to all brughs,) but also of passengers and ferrie boats, (tho they have not convenience yet for landing horses, but they are mending the harborie;) and that their charters from the King bears the right of a free port; (but passage boats is more then this;) and Bruntland, at a conference or meiting, offered to allow them one or 2 boats. The Privy Counsell finding this a case meerly civill, and depending on a declarator, referred them to the Session as the Judge Ordinar for deciding such cases; but recommended it to be summarly discuss their.

No. 105,
p. 36.

18 *Januarij* 1684.—At Criminall Court, Cunnyghame of Boquhan, and many other gentlemen, who had been given up in the Porteous roll to the Circuit Court for conversing with rebels, and particularly Boquhan, for coming in a ferry boat with one of them, and not causing apprehend him in the boat, or at his landing, conforme to the 144 A& of Parliament

in 1592, and ware continued from the Circuit to this day, ware again continued to the day of Aprill nixt.

21 & 22 *Januarij* 1684.—My Lord Cardrosse pershues one Clark a messenger for a ryot, robrie, hamefucken, and oppreffion, before the Criminal Court, in convocating 40 men on a Sunday night, armed with guns, fwords, &c., and coming early in the Moonday morning to my Lord Cardrosse's house, (a peer during a current Parliament, but he having refused the Declaration and Test, did not sit in the last Parliament,) and because the iron gate was shut, with ladders they broke up the windows without concurse from the Shireff of the shire, at leift without the help and assistance of another messenger who is Shireff in that part in such cases; for they cannot make the King's keyes, nor break up doors for executing poindings and captions, without the concurse of the Shireff or Magistrat of the bounds, at leift of another messenger to supply his place. Yet in regard Chryfty, the imployer of the messenger, was a servant of the Earle of Murray the Secretarie, the Justices ware pleased to desert the dyet, without giving ther Interlocutor upon the relevancy of the debate *in jure*. No. 108,
p. 36.

Eodem die, post meridiem.—At Privy Counsell, the Earle of Perth is commissioned by the Juncto of the Privy Counsell to goe up to his Majesty about the Scots prisioners sent from London, (as was pretended,) to see what probation could be got against them. Some whispered it was to establish the service-book, and get a toleration for Papists. Others said they had that already. But the event cleared, that it was against the Chancellor Aberdein he went up. Duke Hamilton said, in full Counsell, None should be sent up to the King but by the wholle Counsell, and they to give them ther instructions. He got a letter with him from the Privy Counsell, anent Sir William Scot of Harden's case, [to learn] what method the King would heirafter take when men ware fyned for their wives delicts; the Act of Parliament about absents from the Church not being expresse against husbands. But this was only a blind to the main designe. No. 110,
p. 37.

No. 111,
p. 37.

Eodem die.—At Privy Counsell, the complaint against the Magistrats and Jaylors of Edinburgh, (*de quo supra* 10 *Januarij*,) is this day advised; and ther heats being somewhat allayed, the censure resolves in a rebuke given them in face of Counsell by the Chancellor, who told them, that the Privy Counsell had found them negligent; but in regard ther was something of chance mingled in the fact, and something of blame in the guard and centries, who did not absolutly depend on the Magistrats, and that they had been loyall, and done some things in ther tyme for securing the prison by strong locks, &c., and making it firmer; therfor the Counsell past them at this tyme, with this certification, that they nor ther successors, nor the keepers, nor magistrats of any other brughs, presume to be slack in preserving prisoners, else they shall not escape a severe punishment both in ther persons and goods.

2^{do}. *Item*, Margaret King's complaint against James Nicolson, late bailzie in Edinburgh, was red; bearing that he had, in a most barbarous and oppressive manner, contrare to law, and without any probation of hir thift, imprisoned hir, and caused the hangman torture and torment hir, by whipping in a private back cloffe. In his reconvention, he offered to prove shee was both a whoore and a theiff; and in May last had broke throw a parpell wall in hir master William Porteous's cellar in Edinburgh in to one Bouden's chop, and stollen fundry things out of it; and that upon the presumptions of it, he had caused give hir some stripes, which is the way to drive thesse base and mean peeples to a confession of ther pyckings, and *modica castigatio* is certainly allowed against such inferior peeples; and without this latitude magistracy could not keip peice or order within brugh. The Lords of Privy Counsell assoilzied Bailzie Nicolson.

No. 116,
p. 38.

24 *Januarij* 1684.—Collonell Grahame of Claverhouse insisting against the Earle of Lauderdale, upon the King's letter, to dispone to him the house, yeards, and parks of Dudhope, with the constabulary of Dundy, he paying 20 years purchasse for it to the Chancellor, to which 20 years purchasse Lauderdale, on his transaction with the Chancellor, was assigned. It was alledged, *Esto* thir ware the King's cause, yet not being called within 48 howers after the returning of the proces, he behooved to have

15 dayes advertifement, conforme to the [16th] A& of Parliament, 1672 ratifieng the regulations, article [1st] which he had not got. The Lords repelled this, in regard the King's letter, *supra* page [17, 10th Maij 1683,] recommending to them to agree, was a *medium impedimentum*; and ther was juft but 48 howers betuen the upgiving of the tryft and the calling, which fatiffyes the A& of Parliament. Then alledged, The fumme of 4000 lb. fterling of the Mint decreit being gifted to Claveris, the King was denuded, and it came to be in the cafe of a common donator, who had not the priviledge of a fummar calling, but behooved to abide the courfe of the roll. The Lords fand the letter made it ftill as if it ware in the cafe of one of the King's ounes caufes. After the repelling thir dilators, then Claveris infifted that my Lord Lauderdale might ather purge all the incumbrances that affected the houfe and yeards, or elfe give him reall warrandice out of his other eftate. The Lords delayed to anfwer to this, feing the offer of absolute warrandice may fatiffy; for by ane inhibition ferved upon it, it may be made more effectuell than reall warrandice, which is reftricted to a particular fubject out of which it is given; wheras ane inhibition ftops the difpofing upon any lands within theffe fhires wher it is ferved and execute.

Eodem die, post meridiem.—At Privy Counfell, Hew Wallace, cafh-
keiper, *contra* William Bailzie of Torwoodhead, *alias* Lord Forrefter, No. 117,
complainig that tho the Lords of Seffion had only repoffeffed the faid p. 39.
William to the houfe and yeards of Corftorpin, yet under that pretext he
had by oppreffion drawen the teynd and uplifted rents from the tennents
of lands wheirin Mr. Wallace ftood publietly infeft under the Great Seall.
2^{do}. That he had affumed to himfelfe the title of Lord Fofter, wheirunto
he had no right, feing that title was given in 1633 to Sir George For-
refter of Corftorpin and the airs maill of his body, which failzeing, to
his airs maill whatfomever. *Ita eft*, this Torwoodhead is defchended only
by the faid Sir George's daughter, and not the eldeft ather, but the 5^t, fo
that he is not *agnatus*, but only *per cognationem* related, the line being
cutted and interrupted by daughters; fo that the title is ather returned
to the King, or elfe belongs to the faid George Lord Forrefter's neareft

agnate. It was answered to the first, That the Lords of Session's decreit of repossession not only repones him as appearand air to the house and yeards, but also to the parks, meadows, and others, wheirin umquhile James Lord Foster dyed in the naturall possession of, when he was stobbed in August 1679 by Christian Hamilton; but *ita est*, it's offered to be proven that he was in the possession of drawing the teynd, so he has not exceeded the Lords warrand. As to the 2^d,—*Esto* the Lord Foster's patent ware *hæredibus masculis*; yet that might admit this fence and interpretation, that if they ware *masculi*, it was sufficient, whither *per filium vel filiam procreati sint*; (but this impinges on the principles of law;) and tho he was come of the youngest daughter, yet the title devolved to him and not to the elder, because he was air of tailzie, expresly destinat by his grandfather, (all the other daughters being then foriffamiliat and married before 1648;) and upon this tailzie resignation was made and accepted by the King, and infestment followed; but tho resignations carryes lands, yet honors and dignities doe not passe that way, without his Majestie's speciall knowledge and warrand. 2^{do} Alledged, His unckle James Lord Forrester possessed that title 19 years, and was ouned and acknowledged by the King and Parliament as a temporall Lord, and is named as such in the 14 A&t of Parliament in 1661, about the King's annuity furth of the Excise; and is named one of the Commissioners of Excise for Mid Lothian; and in 1672 he obtains a decreit of Parliament against the Lady Bramfoord, under the title of Lord Forrester; as also obtains ane imposition for a hy way; and he sits in all the Parliaments; and his nephew may very weill continue his possession till he be legally debarred by a declarator before the Judge Ordinar, or that the King discharge him to use it, especially feing he was not yet master of his writs.

The Lords admitted the first part of Hew Wallace's libell to probation; and first allowed Torwoodhead to prove what the last Lord Foster dyed in the naturall possession of; but afterwards refused it, because he had no libell nor reconvention; but if he pleased he might ather raise a libell, and so get a diligence, or else make that one of his Interrogators to Hew Wallace the pershuar's witneses. This case feimes absolutly civill, and

yet the Counsell medled in it. And as to the title of Honor quarrelled by the King's Advocat, they ordained Torwoodhead, against Tuesday next the 29^t of Januar, to adduce what documents he had for evincing the right that James last Lord Foster had to tak and assume that title: For tho of old our nobility had no patents but possession and the King's tolerance, it was not so of late; but these who were created nobles, or were called to Parliament, their creation was by a patent. I remember, in March 1680, the Privy Counsell discharged George Earle of Caithness to assume that title; but afterwards the Duke of York, (who had reason to be against the exclusion of lineall successors,) took off the prohibition. When the Advocats in 1676 debarred the nobility from coming in amongs them, the last Lord Forrester mutineered, and stood on his peerage with others; but word was sent him he was no Lord at all; and at best it was only a temporary one during his life, and he had lost his patent some way before it was past the Sealls. And this Torwoodhead, in June 1681, voted at the election of the Commissioners of Stirlingshire to the Parliament, and his vote being questioned as a Lord, he, before the Committee of Elections, disclaimed his being one:—Yet a man who has right of blood, finding the fortune low, may refuse a title of honor due to him; and thereafter, when he thinks himselfe more able to support the dignity, he may assume it.

26 Januarij 1684.—The minister of raises a reduction No. 118,
 against Glenurchie, now Earle of Brae[d]alban, of a tack of his teynds P. 40.
 he had set him at the tyme he did present him to be minister of that kirk, as a simoniacall pactiō, to the prejudice and dishonor of the Church. Answered, Whatever may be reputed simony by the canon law, yet with us, by the 1 A^t of the Parliament 1612, such tacks set by ministers are declared not to be simony, providing he leave to himselfe and succeeding ministers a sufficient maintenance; which, I think, from other A^{ts}, may be interpret to be 8 chalders of victuall, or 800 m^ks. of money; and that whither it be *pactum honestum*, or *turpe non refert*, (nather should the setter, who is *in pari turpitudine*, quarrell it,) seeing all the patrons of Scotland use it at their presenting, and the forsaide A^t allows it. This

was not decided ; but the Bifchops ware very zealous, and threatned they would have theſſe tacks annulled as fimony.

No. 119, 24 & 26 *Januarij* 1684.—The Earle of Loudon, Lord Melville, Sir
p. 40. John Cochrane, and others, ware cited by order of the Counfell and Criminall Court, both at the marcat-croſſe of Edinburgh, and peir and ſhoar of Leith, to appear on 60 dayes, as out of the countrey. This was in order to the denouncing them fugitives if they ſhould not appear.

No. 122, 31 *Januarij* 1684.—The Caſhkeeper and Claverhouſe's cauſe (*de quo*
p. 41. *ſupra* 24 *Januarij*) againſt the Earle of Lauderdale, was heard in preſence ; and Lauderdale offering him a diſpoſition of the houſe, yeards, and parks of Dudhope, and conſtabulary of Dundie, in the termes of the King's letter gifting the ſame to Claverhouſe, at the rate of 20 years purchaſſe, to be payed by him to the Chancelor, which right the Chancelor had aſſigned in Auguſt laſt to Sir John Maitland, when he aggreid with Lauderdale. It was alledged, 1^o That the Chancelor had not right to the 20 years purchaſſe ; againſt which the King's letter was opponed. 2^{do}. That he behooved to diſburden it of all incumbrances. 3^{tho}. He moſt renunce his releiff againſt Sir John Falconer and his cautioners, viz., Southek, and Glenfarquhar, the Prefident's father, conforme to the King's letter. The reaſon Claveris gave why he was not bound to pay 20 years purchaſſe, was, that it was expreſſly commoned betuen the Chancelor and him, that he ſhould have it *gratis* without any payment, (which the Chancelor denying on the bench, Claveris replied with ſome heat ; and Edmiſton, the youngeſt Lord, told him he ought not to ſpeak ſo to the Chancelor,) and that the King gave him freely out of the Mint-decreit 4000 lb. ſterling, or elſe the houſe, yeards, parks, &c., of Dudhope ; and if he pay 20 years purchaſſe for them, he gets no donative at all, but payes the full worth and more.

The Lords the nixt day, being the 1 of Februar, having adviſed this cauſe, they found Claveris bound by the King's letter to pay 20 years purchaſſe for all within the parks, and reſerved out of that which is appointed to be diſponed to the Chancelor ; and for liquidating of that,

granted commiffion to _____, &c., to value the lands, and to report what they are worth, being eftimat at 20 years purchaffe; and finds the difpofition offered not fufficient, as wanting the Lady Maitland's confent, and that it ought not to relate to the 20 years purchaffe; and therfor ordained Lauderdale, that fame day, to have a difpofition ready of thefe lands and parts, with reall warrandice out of his other eftate, to be given up to Claveris, upon his payment of what fhall be determined to be the 20 years purchaffe; with this claufe farder, that in cafe of eviction of thefe lands, Lauderdale fhall be bound by the faid reall warrandice to the value of 4000 lb. fterling, which was gifted to Claveris out of his fyne of the Mint, but the faid lands worth 4000 lb. fterling only to be affected *quoad valorem* of the lands difponed: which was moft iniquous and unadæquat, like a *pretium affectionis*; for the lands to be difponed are not worth a 4^t part of that fumme, and this reall warrandice will be a mean to obftru& the fale of the lands to be thus given in warrandice. Lauderdale had another defence, that *ſimul et ſemel* with his giving this difpofition, the King's letter appointed him to get his free remiffion for any malverſation whatſoever he could be charged with.

This action being called again, on the 6^t of Februar, the Lords fand my Lord Maitland's ſubſcribing the difpofition, and his Lady's renouncing, fufficient to ſecure Claveris againſt hir lif-rent; and that [Patrick] Scot of Roſſie's conſenting to the faid difpofition, was fufficient to purge his warrandice he had theiron for the lands of Craig; and fand no inhibitions could affect the houſe, parks, and conſtabulary of Dundy, but only theſe that ware ſerved at the mercat-croſſe of Forfar, as the head brugh of the ſhire of Angus, wheirin the lands lyes: And as to the incumbrance condeſcended upon by Claveris, of the reduction depending againſt Lauderdale at the inſtance of the Earle of Dundie's creditors for reducing his decretit of recognition, the Lords appointed the Lord Pitmedden, before whom the ſame is depending, to diſcuſſe it ſummarly before the report come back of the value of the lands; and in cafe the creditors doe not inſiſt, ordains Lauderdale to give him reall warrandice againſt ther inhibitions ſerved upon the dependance.

No. 123,
p. 42.

Eodem tempore.—At Privy Counsell, Mr. William Ecclesse, one of the Indulged Ministers, being conveyed for preaching and praying without his parish, and he having confessed the same, was silenced and deprived. They found the King did not directly incline to retract this Indulgence; but they do the thing upon the matter; for they pick every small quarrell with each of them, and turns them out one by one.

2^{do}. The Earle of Monteith pershues Robert Rosse of Auchlossan for a ryot committed by him, in seizing upon one of the witnesses he was to adduce for proving the Ladie Monteith's adultery. Admitted to probation.

No. 124,
p. 42.

5 *Februarij* 1684.—The Magistrats and Ministers of Edinburgh, as administrators of Heriot's Hospitall, pershue a reduction of a tack set by them in 1678, to one Sinclar and Stevinson of the Cannomilnes, as done by private contrivance, and to the læsion of the Hospitall, (who enjoy the privilege of minors,) it being set for 2300 mks. for 19 years, wheiras 1000 mks. more yearly was offered; and it was set in fundry particulars contrare to the statutes of that Hospitall. And tho it was answered, That the tackfman was not bound to know thesse privat statuts, yet *scire tenetur conditionem ejus cum quo contrahit*; and Heriot, a donor, might annex what qualities and conditions to his gift he pleased. The Lords, on Castlehill's report, before answer ordained the foundation and erection or mortification of Heriot's Hospitall, with ther statutes, to be produced.

No. 128,
p. 42.

6 *Februarij* 1684.—Collonel Whytfoord is pershueing severall wassalls of the Bischopricks of Galloway, (wheirof his father was Bischop in 1630,) for payment of teind duties out of the lands now posselt by them. Alledged, Teinds are not *debita fundi*; and unlesse he offer to prove that they represent one by some passive title who possessed thesse lands the years he claims, he cannot convey them. Answered, It's presumed ther father possessed the teynds, unlesse they prove another drew thesse teynds, or had a right theirt. The Lords, on Pitmedden's report, found the Collonel behooved to condescend and prove that the persons whom they represent did specifically possesse thesse lands and uplift the teynds, the years libelled.

Eodem die.—At the Commiffion for Plantation of Kirks, my Lord ^{No. 130,}
Melvill reducing a decreit of augmentation, obtained againft him by Mr. ^{p. 43.}
James Williamfone, minifter of Kirkcaldy, of 100 mks. yeirly, and con-
verting oats to bear; the Lords notwithstanding fufained the decreit,
and affoilzied from the reduction; becaufe, tho ther was a new Church
erected at Abotshall, and tane of Kirkcaldy, yet that could not prejudge
the *ecclefia matrix* of which it was difmembered, efpecially feing Melvill
payed no communion elements to the kirk of Abotshall.

2^{do}. I heard it quæftioned at this tyme, If a Minifter be feiking ane
augmentation, who hath not full 8 chalders of victuall, or 800 mks. of
money, and ther be no free teyndes unexhausted in the parifh, but only
decimæ inclufæ, whither will they be burdened, or will the minifter be
fent to the *remedium extraordinarium* of affecting the free impriviledged
teinds *non inclufæ* of the adjacent parifh, as the Minifter of North Leith
got of the Weft Kirk parifh?

7 *Februarij* 1684.—Mr. Alexander Burnet, Arch-Bifhop of St. An- ^{No. 131,}
drews, againft Beton of Blebo: The cafe was, Blebo was a fimple waird ^{p. 43.}
waffall of that diocy; he agrees with the laft Arch-Bifhop Sharp, and
gets his lands taxed, and for it and fome bygane cafualties he gave him
10,000 lb. Scots. This Arch-Bifhop raifes a reduction of that conver-
fion upon this ground, that Churchmen are but difpensators, as tutors and
curators to ther See, and meir adminiftrators of the benefice, and can doe
no deeds of property or dilapidation to the prejudice of ther nixt fuccef-
fors; as is clear from the Canon Law, and feveral Novell constitutions
... and our law has not been fhort in providing the like remedies ...
which allows Bifhops to feue ther waird-lands; and their would have
been the leffe to fay againft this taxing, if their had been infert in the
charter ane annuall præftation of a few duety, which would have given
the benefice ane certain rent, in place of the former uncertain cafualty
of waird, which might not exift in ane age. Answered, Taxing a waird
is but a rationall deed of adminiftration, and no dilapidation; elfe the
King's waird-waffells could not, to the detriment of the Croun's patri-
mony, be allowed to be taxed. The Arch-Bifhop wold gain more by

loſing this cauſe ; for if the commutation were ſuſtained, he could tax other waird-waffalls, and get conſiderable compoſitions from them for doing it. It is moſt juſt the clergie have a comfortable maintenance to vindicat them from poverty, and ſett them above contempt and all worldly cares, yea, they ſhould be allowed ſomewhat even for hoſpitality ; but when they began to get immenſe donations and great temporalities, by the munificence of Princes, and ther ſuperſtition about the year 600, then was that voice heard, *Hodie venenum infuſum eſt in Eccleſiam*. We may now take up that old regrait, When ther ware *calices lignei* ther ware then *facerdotes aurei*, but now when our chalices are of gold and ſilver, we have gotten *ligneos facerdotes*.

No. 132, *Eodem 7 Februarij* 1684.—At Privy Counſell, the King's remiſſion to
p. 44.

Laury of Blaikwood, condemned for reſett of rebels, (*vide* Manuscript E, at the 31 of Januar 1683,) was preſented ; but in regard he reſuſed the Teſt, it was qualified with baniſhment ; only ſuperceided it for a year, that he might clear his counts and reckonings ; and when that is run out, he being ane old man, he will get (as is likely) the time prorogate.

No. 134, *8 Februarij* 1684.—Bruntiland and Kirkcaldie's debate, anent the right
p. 44.

of ferrie boats, was reported by Carſe, (ſee it *ſupra* 17 Januarij ;) and the Lords being unclear, nominated the Prefident, Blair, and Carſe, and recommended to them to call both parties before them, and ſtudy to ſettle and accommodat the difference betuixt them. But they not having prevailed, the parties at laſt ſubmitted to Sir John Cunyghame, who by his decreit-arbitrall reſtricted Kirkcaldy to 4 boats, and Dyfert to 2. Bruntiland and Kinghorne having as many as they pleaſe. *Queritur*, How far theſe 2 brughs may quarrell this decreit, it only being ther magiſtrats who ſubmitted, who can not alienat the toune's priviledges ?

No. 135, *Eodem die*.—Patrick Mitchell in Preſton having raiſed breives to ſerve
p. 44. himſelfe air to

Mitchell, his couſin german, before the bailzies of the Cannogate, and having led probation on his conſanguinity before the inqueſt, James Weir of Kirkfield, ſervant to the Hy-Treaſurer, having

got the gift of the defunct's *ultimus hæres* and bastardrie, raises ane advocacy; and tho ther ware no documents of bastardrie, but great evidences of his legitimatenesse and his contingencie of blood, yet, by the Treasurer's moyen, it was advocat to the maiffers, and Salin appointed to be ther affeffor.

Eodem tempore.—Ane account came from Court, that upon Perth's No. 139, arrivall their, the King conveyined his Scots Counsell at London, wher^{p. 45.} the case of Sir William Scot was fully debated, and the King at last approved of his Counsell in Scotland's procedure in fyning him: (*vide* 15 November 1683;) Tho the Marquis of Hallifax, Privy Seall, argued stoutly against it, as unreasoneable to put it in a capricious wife's power, by her delicts to expose hir husband's estate to ruine, by fyning him for hir transgressions; and it's the harder, that hir oath will not bind 5 mks. of debt on hir husband, by our law; and yet hir contumacy in absenting hir selfe from Church, and running to Conventicles, shall expose him to imprisonment till he pay 27,000 mks. for hir. But the King inclined in the generall to indemnify husbands for ther wives bygane faults, they undertaking for ther deportment *pro futuro*.

^{2^{do}.} *Item*, Muir of Rowallan younger, one of the 12 sent from London, and cloffe prisoner in the Tolbuith of Edinburgh, on his falling sick is suffered to come forth, and confyned to another house, within the toune of Edinburgh.

Eodem tempore.—A complaint being made to the Privy Counsell, that No. 140, the officers of Collonell Gage, or the Duke of York's regiment in Flan-^{p. 45.} ders, ware forcing severall men away with them; the Counsell stopped and arreifted the ship, and named a committie to searck and examine it; for tho they had the King's warrand to levy sojors, yet they most take none but who are willing to goe; and even prentises (tho willing) may not be taken; but forners and vagabonds, by our Acts of Parliament, (see A& 22 in 1449, and the late Index of our Acts of Parliament, *voce* Beggars, Poor, and Sorners,) may be seized on, and ather put in correction houses and manufactories, or delivered to forrain captains, or banished by the

Counsell; even as they doe with malefactors in prifon, againft whom ther is not a full probation. Their was much caufe for this outcry; for by drinking with poor men, and other arts, they trepaned many. Some alfo took ther arles, and craftily cheated them.—This fearch was occafioned by a difcord fell out betuen the Flanders captains and Thomas Wilfon, bailzie of Leith, who liberat 3 men of thers who ware in Leith Tolbuith; and the granadeirs who lay in Leith taking the forrain fojors part, broke the toune of Leith's drum, when it was beating thro the toune, becaufe being a garrifon toune, they fhould be acquainted before any other drum then ther oun beats, becaufe it otherwayes gives them the allarum.

No. 143, 12 *Februarij* 1684.—Hary Oliphant's probation againft the Clerk of
p. 46. the Bills (*de quo fupra* 8 *Januarij*) being advifed, and finding he had not proven the cuftome, they fell upon a new knack to affoilzie him, viz., that his gift boor him to the office during Sir William Bruce's lifetyme, wheiras the debate on both fydes ran, not if it fhould defend and fubfift during the granter's lifetyme, but if during the receaver's; and this decifion would caft the Clerks of Seffion loufe at the death of the upper Clerk ther mafter. 2^{do}. Sir William Bruce's death moft be underftood heir not *naturaliter* but *modo civili*, when he ceafed to be Clerk of the Bills by his dimiffion, without fpecially referving this deputation which he had given to Hary Oliphant.

No. 144, *Eodem die*.—At Privy Counfell, Mr. Hew Dalrymple and Mr. Æneas
p. 46. Macferfon, advocats, ware conveyined for challenging one another to a combat: The occafion was, Mr. Hew, as one of the Comifars of Edinburgh, was receaving fome witneffes for the Earle of Monteith againft his Ladie, in the divorce, and repelling fome objections Mr. Æneas was making againft them, wheiron followed fome heat, with fome approbrious words, calling the Comifar partiall. Some thought, one fitting in judgment might have fent any reviling him to prifon; but he challenged Mr. Æneas to a combat; and the Counfell fand him as guilty in accepting it, and ordained him to crave the Comifar's pardon, and confyned them both fome tyme; and then laid Mr. Angus in the Tolbuith for a fhort tyme.

14 *Februarij* 1684.—The action pershued by David Peacock in Vidavia No. 145,
 in Pole, and Alexander Gordon bailzie in Aberdeen, his assigney, against p. 46.
 the toune of Edinburgh, being called *in præsentia*; alledged, This debt had
 all the qualifications requisite to a publick debt, and so was discharged by
 the 26 A&t Parliament 1681; for it was contracted in 1640, when Generall
 Ruthven keiped out the Castle against the Covenanting Lords, for the
 King, and had a generall warrand in the A&ts 33 and 34, Parl. 1640,
 anent the Committees of Estates borrowing money for carrieng on that
 cause; and the Toune Counsell of Edinburgh's A&t, which is the warrand
 of this bond, mentions that it was to help to leavy 500 men. Answered,
 The A&ts of the Toune Counsell being the debtor's oune deeds, cannot
 annull his bond; and the very A&t bears they got ane assignation upon the
 contribution of the tent penny and the excise for ther releiff. Replyed,
 The bond relates to the A&t, and without ane A&t would be null, and so is
 just alike as if the A&t had been engrossed in the body of the bond; and
 the registers of a Toune unvitiat are probative both *pro* and *con*; and that
 assignation for releiff was never effectuell, that contribution being but a
 voluntar thing; and the Estates giving that assignation, is a sufficient
 argument they acknowledged this for a publick debt; and so the Estates
 undertook it *animo se obligandi*; and the definition of ane obligation
 agrees heir, that it's *vinculum juris quo necessitate astringimur*, &c. The
 Lords, by the Chancelor's moyen, declined to decide this; and named
 some of ther number to indevor to settle the parties; and accordingly the
 Good Toune got doune 4000 mks. of the wholle clame, viz., principall
 and annuells, and gave security for 6000 mks.; and the decreit went
 furth in thesse termes for ther warrand.

Eodem 14 *die*.—At Privy Counsell, a bill of the Magistrats of Edinburgh No. 149,
 was read, craving they would put a stop to James Hamilton's declarator p. 48.
 before the Session, that he was legally elected Clerk of Edinburgh; and
 to recommend it to the Lords of the Session to sift proces theirin, till
 Sir James Rocheid's count and reckoning about his malversations ware
 closed in the Exchequer, seing he had dimitted to the said James Hamilton
 the halfe of the place *pendente lite*, and taken 1000 lb. sterling from him

for the same. The Chancellor and Duke Hamilton opposed this, as a *remora* to justice. James Hamilton was ordained to see and answer.—I find in Hope's collection of Practiques, *Titulo* of the Session, (folio *mihi* 132,) the Privy Counsell did discharge the Session to proceed in 2 causes, viz., Sir Richard Maitland of Leidinton's against Sir David Home of Fischweik; and betuen the Lord Forbes and the Earle of Huntly; but this being *mali exempli*, and complained of to the Parliament, they, by the 92 and 94 Acts Parliament 6, James 6^t, in 1579, discharged the like to be done in tyme coming.

No. 150,
p. 48.

Eodem 14 *Februarij*.—At Privy Counsell, Mr. Ezekiel Montgomery of Witlands, Shireff-depute of Renfrew, being pershued for 24 articles of malversation, oppression, concussion, and extortion from the poor people at the last Circuit Court in 1682, to squeeze money to himselfe, Sir William Paterfon, and Mr. Thomas Gordon, clerks; such as seizing on a woman's moveable goods, on pretence shee was going to hang herselfe, because hir head was found feltered in a net hanging doune from the bed-head; and taking away 1000 m^ks. of money from a man whose house was brunt accidentally, but in seeking the rubbish, he found that bag, and he told the people he had not lost all, for he had recovered so much of his money; but Mr. Ezekiell took it from him, on this pretext, that it was a hid treasure and pose, and so belonged to him as Shireff; which was *luctuosum ex alterius calamitate compendium*, as the Emperor speaks in *bonis ex naufragio direptis l. navigia c. de furtis, et l. 1, c. de naufragiis*; and the Shireff hes no right to treasures, or escheat goods ather, but only *custodie causa*, to count to the Exchequer for them. The Hy Treasurer urged, seing the articles ware so grosse, and the summes considerable, that he might find caution, under the pain of 1000 lb. sterling, to abide all the dyets of the proces, and not to flee before sentence. It was answered, It was not usuall before the Privy Counsell to put the parties under caution before probation, that being only customary in the Criminall Court. Replyed, The case was odious, and the diffamation flagrant, and ther was *periculum in mora*. So he offering caution, it was rejected as insufficient, and he committed to prison. This practise, tho

new, was used against him to make him tell what part of the spoil he gave Mr. Thomas Gordon, to load the Chancellor thereby.

2^{do}. *Item*, At Privy Counsell, a competition arising between the Colledge of Glasgow and , about a vacant stipend, the Lords preferred the Colledge thereto.

19 *Februarij* 1684.—The forsaide cause, Wilson against Home of Renton, No. 153, debat (*supra* at the 8 of Februar,) being advised this day, they sustained^{p. 49.} the adjudication; but on the 26 of Februar 1684, they made ane A& of Sederunt for the future, discharging any to adjudge the lands and a 5^t part more in tyme coming, under the pain of nullity. But now in bonds, they turne the 5^t part to a penalty; so that in a bond of 5000 mks., wheirof the penalty used to be only 5 or 600 mks., they now make it 1000 mks.

And the next day, being the 20th, the Lords advised the other branch of the debate; and found the debtor may force ane appriiser or adjudger (so long as his legall is unexpired) to restrict his possession to lands effeirand to the annuel rent of his money; and the lands to be allocat at the option of the Lords of the Session, and that in respect of the clauses contained in the 62 A& of Parliament of debtor and creditor in 1661: tho it was alledged this was only a temporary clause, and depended only on the 6 years suspension of principall summes, and expired with it; yet the Lords fand it a generall and perpetuall law;—which some thought a great incroachment and invasion on the rights of apprisings and adjudications; and by this, during the legall reversion, they can nather remove the debtors from the mansion-house nor parks, but must take what land the debtors have moyen with the Lords to allot them, and then make them countable. This was done by the Clerk Register's power, to be a preparative against Clackmannan his son in law's creditors.

21 *Februarij* 1684.—The Arch-Bisshop of St. Andrews Burnet's per- No. 158, shuit against Blebo, (*de quo supra* pag. 43,) is advised; and after much^{p. 51.} agitation, they lay it asyde as *egens decisione imperatoria*, and referred it to be determined by the next Session of Parliament, If a Bisshop (who

was ane administrator of his benefice) might tax a waird-holding without committing dilapidation? Now it was thought, tho the Parliament should find they could not, yet that would not be retrotracted *ad præterita*, but only respect *casus futuros*: so it feimed Blebo's right, in probability, might then have escaped as valid.

2. But the Arch-Bisshop could not be diverted from his zeal to the Church, and so gave in a bill to the Lords on the 12 of March, craving that they would not delay ther Interlocutor, nor refer it to the Parliament, feing the interest of the Church suffered *medio tempore*. The Lords fand, feing the pershuar (contrare to his oun private advantage, for the good of the Bisshoprick,) urged for a decifion, they could not refuse to advise it; and cited the 92 A&, Parliament 1579, ordaining them to proceed in all causes, without referring them to the Parliament; and therfor declared they would advise it the morrow.

3. And accordingly on the 13 of March 1684, the Lords reduced the conversion to tax-waird; and found a Bisshop being not *dominus*, (who may dispose, except law or paction restrain him,) but only an *æconomus*, *dispensator*, *curator*, and *administrator beneficij*; he cannot dispose farder then law permits him, which it does not, to change simple-waird into tax-waird. Sir George Lockhart, at delivering the Interlocutor, repeated that of Lucan, *victrix causa Diis placuit, sed victa Catoni*; for he thought they had decided against the principles of the Canon law, and against Craig *de feudis*. This Interlocutor reflected on the last Arch-Bisshop Sharp, who taxed this waird; but Blebo had warrandice in case of distresse, and so resolved to recur upon Scotsraig his sone for his composition he had payed.

No. 159, p. 51. *Eodem 21 Februarij 1684.*—My Lord Colinton's patent to be Justice-Clerk, in place of my Lord Maitland, laid asyde, came doune; and my Lord Carse was put in his place as one of the ordinar Criminall Lords. Colinton came in by the Register's moyen; and tho no lawyer, was the more acceptable to the King, that he had suffered much for him. (See the competitors who stood for this place, in my 8^{vo}. Session Manuscript marked I, page 86, *et seq.*)

Eodem die.—At Privy Counsell, John Forbes printer in Aberdeen, No. 160, with concurrence of the Magistrates thereof, pershues Agnes Cambell, the p. 51. relict of Andrew Anderson the King's Printer at Edinburgh, and Robert Sanders printer in Glasgow, for reprinting his Prognostications, whereby they undersold him, and wanted [vented] more than he did, whereas he was in use before to sell about 50,000 copies, for each of which he got a plack; and that Sanders on the frontispiece of his had counterfit the armes of Aberdeen; and this being *in damnum et æmulationem vicini*, they ought to be discharged; as also fyned, in reparation of his losse. Answered for Mistress Anderson, By hir gift shee was privileged to print Almanacks *per expressum*, and could not be discharged. The Counsell committed the difference to the Bishops, to settle them; who inclined to discharge any of them to print one another's Almanacks.

22 *Februarij* 1684.—One [George] Martin a nottar and schoolmaster, No. 161, and other 2 West-country men, called Carstairs [err. for John Ker] and p. 52. [James Muir], (who were condemned on the 19 of February last at the Criminall Court,) are hanged this day for ther rebellious principles, allenarly in disowning the King's authority. They had offers of ther lives, but ware so foolishly pertinacious as to refuse it.

Eodem 22 Februarij.—The Lords as Commissioners of my Lord No. 163, Argyle's forfaultor, for ranking the creditors, met this afternoon. And p. 52. Lundy, Treasurer-depute, as donator to Hamilton of Monckland's forfaultor, having right to 10,000 mks. was owing by bond to Munckland, by Argyle; and having procured a letter of recommendation from the King, the Lords ware much puzzled, for they had the haill creditors to rank again, and to adjust and cast up ther proportions, to make rouse for taking him in unto the first classe of the creditors; and they gave him Sir Colin Campbell of Arbruchle's locality.

Eodem tempore.—One Macdougall a Hylander is pershued by his wife, No. 164, before the Comissars of Edinburgh, for a divorce *ex capite impotentie*, p. 52.

offers to prove it by inspection of chirurgians, that he hes nothing wheir-with. He declines a visitation, as immodest, and absents himselfe. *Quid juris*, shall he be holden as confest? *nuda inspectio corporum* is condemned by Justinian *ad princip. Tituli Institut. Quibus modis finitus tutela, et Vinnius* ther. The old way of tryall was by a filk cord doune ther belly, if it got free passage doune, or not.

No. 167, 23 *Februarij* 1684.—The declarator of recognition of Sir John Hay of p. 53.

Muiry against Poury Fotheringhame was advifed; and the Lords having confidered the depositions of the witneffes adduced anent the rentall, they find them unclear; and therfor grants commiffion to Forret, Drumcairn, Blair, and Carfe, or any two of them, on the ground of the lands to re-examine not only thefe witneffes, but alfo gentlemen and others about who know any thing of the true rent of the controverted lands, if more than the halfe be truely alienat, fo as to make all recognofce, and grants diligence for citing witneffes. This was a great favor to Poury, after probation led, to make a new A&. (*Vide supra* thir parties, 4 *Decembris* 1683.)

No. 169, 25 *Februarij* 1684.—Sir Patrick Lyon, Lord Carfe, is admitted at the p. 53.

Criminall Court one of the Lords of the Justiciarie in place of Colinton, advanced to be Justice Clerk.

No. 171, 26 *Februarij* 1684.—The Lords, in the case of Doctor Taylor, fervitor p. 53.

to the Dutcheffe of Portsmouth, fand, he as donator to the bastardy, and *ultimus hæres* of , had right without a declarator; tho in Durie's tyme, and twice fince the King's returne, it is decided, thefe gifts alwayes neids declarators, viz., on the 30 of Jully 1662, Rofs of Balnagoun, and 30 Jully 1666, Crawford.

No. 172, 27 *Februarij* 1684.—The Earle of Aberdean, Chancelor, and Sir p. 53.

Alexander Forbes of Tolquhon's case decided, anent *viæ regie vicinales, publicæ, et privatae*. The Lords having heard the bill and answers, they sustain Tolquhon the defender's alledgeance in thir termes, That the de-

fender offers to prove the way controverted is the hy way directly leading from a brugh royall, viz., Bamff to a brugh royall, viz., to Aberdeen, or from Bamff to a sea port directly, and so is the King's hy way; and adhæres to the A& as to the other points, allowing to prove that he had præferyved a way for peats by 40 years possession before interruption; and refuses to grant a commission, or visitation; but prorogats the dyet of reporting the diligence to the 25 of March nixt. This was repute a very strange Interlocutor, only carried in compliance to the Chancellor, who was feiking to force Tolquhon to give him a moffe-tolerance for hy wayes. . . . It was alledged for the Chancellor, In thir cafes ther was only *tantum præscriptum quantum possessum*, and no more; so that his use and custome of carreing lyme that way ought not to give him right to carry peats, (unlesse he had carried also peats that road 40 years,) thesse being *diversa*, and it being odious to burden another man's lands with servitudes of hy wayes; yet the carrieng the one is no more prejudicial then the other. . . And by this Interlocutor no way ought to be repute a King's hy way, unlesse both the *terminus a quo et ad quem* be publick; wheras lawyers think it enough tho it begin *in agro privato, si exitum habet in viam publicam, vel urbem, vel portum, vel flumen navigabile*, or to a kirk, or to a moffe. The Chancellor would only make Tolquhon to have a right only to an *iter*, a foot way, or an *actus* at most for a horseman, but not to be a *via* for cairts, or wains, or droves of cattell.

28 *Februarij* 1684.—Claverhouse's cause against the Earle of Lauderdale No. 175, was called; and the Lords fand, they might advise it summarly p. 54. without enrolling, it being a part of the King's cause; and that they cannot oblige Sir John Maitland to consent to his father's disposition to Claveris; but ordains the Clerk to mark on the proces that he was cited; and finds by the probation the 20 years purchasse of Dudhope, &c., comes to 6000 lb. Scots; and on his paying therof, ordains the disposition to be delivered up to him before the 20 of March; betuixt and which tyme Lauderdale may obtain my Lord Maitland and his Ladie's consent; otherwayes ordains the decret to be extracted.

No. 178, *Eodem die*.—At Privy Counsell, the Earle of Monteith's probation
p. 56. againſt Roſſe of Auchloſſan was adviſed, (ſee it *ſupra*, page 42,) and
they fand the ryot proven, and ſent him to priſon, and fyned him in
400 mks.

2^{do}. *Item*, The caſe of Forbes and Miſtris Anderſon, the 2 printers,
is adviſed, (ſee it *ſupra* page 51;) and the Lords, in reſpect Forbes
had taken a tolerance from hir huſband to print ſome books, in which
agreement Almanacks was none, therfor diſcharged him to print any
Almanacks after 1685, (which he had ſtudied already,) as alſo diſ-
charged hir to reprint his Almanacks.

No. 182, *Primo Martij* 1684.—Ther is a letter from the King, procured by Mr.
p. 56. William Leviſton, brother to the Viſcount of Kilſyth, to the Lords of
Seſſion, deſiring them to forbear the deciding of that advocation raiſed
by him againſt Miſtris Betty Whytfoord, daughter to umquhile Sir John
Whytfoord of Milneton, from the Comiſars of Edinburgh, for adhærence,
and for declaring that he had ouned hir for his lawfull wife, (for ſhee had
borne him a child;) and to lay it over to the 1 of November, in regard
he was at London ſick and unable to attend it; and the King had cauſed
his ounge phyſicians viſit him, and they had attested and declared he could
not travell at this ſeaſon without hazard of his life: ſo it was no ſimulat
ſicknes; yet ſome can procure a fever to themſelves for ane hower or two.
This letter being intimat to hir Advocats, they objected that this was a
privy writing not to be regarded by the 92 A& of Parliament in 1579,
and the 47 A& Parliament 1567, and was *mali exempli* to ſtop juſtice,
eſpecially againſt hir who was ſeiking to have the ſtain lying on hir
honor cleared, by proving that he had ouned hir as his wife when ſhee
was in childbed. Some did contend, that by the 18 A& Parliament
1680, anent the King's cumulative juriſdiction, he might ſtop any proces
depending before the Lords; but that was not meant by the Parliament
at the making of that A&.

No. 183, 3 *Martij* 1684.—At the Criminall Court, Mr. John Meinzies, brother
p. 57. to the Laird of Coulterallers, and fundry others, are forfaulted in abſence,

on probation led that they ware at Bothuel-bridge, though Meinzie's fell but accidentally amongs them.

2^{do}. *Eodem die*, at night.—Mr. John Dick, (who escaped out of the Tolbuith of Edinburgh on the 15 of September last,) is apprehended in Edinburgh; and Mr. John Rae, a phanatick preacher, is taken with him. Dick was sentenced, before his escape, to be hanged, for his being in rebellion, and for his owning treasonable principles; so that the Criminall Lords had nothing else adoe but to set a new day for his execution; which they did, and appointed the 5 of March for it, at the Graffe markat.

4 *Martij* 1684.—The Lords having formerly superceeded the extract of James Clelland, merchand in Edinburgh, his decret against Captain Cairnes, (for furnishing his company with cloath and farge to be new liveries at the fitting doune of the Duke of York's Parliament in Jully 1681,) till the 1 of March; he on that day by a bill gets a new prorogation till the 25 of March, on this pretence, that he got not yet in the companies pay for thesse moneths of Jully, August, and September 1681, out of which this æquipage should have been payed: But they declared they would give no longer delay if he did not provide the money betuixt and that tyme.

5 *Martij* 1684.—At Exchequer, the masters of the Eister Sugar-manu- factory at Glasgow having sent some hogsheds of brandee to Edinburgh, Alexander Hamilton, Captain Andrew Morton, and the other tacksmen of the excise and custome of brandie, seized on it, till they should be payed of the dues. The Sugar Company gave in a bill, first to the Privy Counsell, and then to the Exchequer, alledging manufactories, by the 12 Act of the Parliament in 1661, ware declared free of all dues, and that by ane imprinted Act of that same Parliament, ther Sugarie-work was declared ane usefull manufactory, and the wholle product of it was exempted from customes and excise; *ita est*, this brandee was made of the refuse of ther sugar, viz., the molasses which would not be sugar, and so was the product of the manufactory. Answered for the taxmen, Thesse Acts excoemed nothing but the genuine and native product of the manu-

factory, which was fugar only, and fugar candie ; but if *per specificationem* a new species and kind quite different from fugar, (such as brandee is,) be made or extracted of the materialls, it's unreasonable that should clame the priviledge, feing that is not the principall and naturall use of the manufactory for which it is erected and incouradged, but only a collaterall and accidentall one. 2^{do}. The rum (for they call it so, and not brandee,) made of thir molasses is most unwholsome, and generats many diseases, as our phyficians will attest, and therfor its prohibite in Holland. 3^{io}. It wrongs the importation of forrain Nantes brandee, (which is a very wholesome liquor, if moderatly taken,) and so prejudges the King's customes neir 2000 lb. sterling a year. 4^{to}. Under the pretence of this they imbezill and steall in at the many creeks of Clyde river, (at every one of which it is impossible for them to have waiters, else the cost would outgoe the profit,) forrain brandie ; and because they give ther oath at Glasgow that it is all made of ther oune molasses, therfor they, to evade and elude this, doe mix it with forrain brandee, uncustomed by the way betuixt Glasgow and Edinburgh, and so under sells the forraine customed brandee ; therfor they and all the carters, (for he who mixes it on the road is dismissed back, and another brings it forward to Edinburgh, who can sweare he mixed it not,) most be oblidge to sweare it is all Scots brandee, all made of ther oune molasses without mixture. The Lord Treasurer-depute and King's Advocat declared, It was the Parliament and the Articles meaning, that not only the fugar but even ther brandee made of ther oune molasses should be free, (tho the A& be not speciall as to this ;) and that the discharging this brandee would ruine the manufactory, and that such publick works ought not to be discouraged. Only they ordained proposalls to be given in for securing that no mixture be used, and that, under the pretext of ther oune molasses, they doe not vent forrain brandee free of excise and custome ; and to try if by [the] manufactory count-books it could be found what quantity of molasses they have monethly or yeirly, and how much of them goes to the making a hoghead of brandee, and then by comparing this with how much brandee they yeirly expend and vent, it might be calculat if it was all the product of ther oune molasses, or was mixed.

Eodem die.—Ther is a letter from the King, anent Argile's signator, No. 190, (*de quæ supra*, pag. 40) anent that debate, if the Earle's waffalls be comprehended therein. The King now in his letter declares, it was not his meaning that the waffalls should fall under his gift in favors of the creditors; for tho waffalls, by the very claufes of warrandice contained in ther charters from the family of Argile, ware creditors as weell as the rest ware. Yet this does not determine whither the unconfirmed waffall's properties shall fall under the forfaulter or not; for theſe, it may be, are referved to be the foundation of a new donation from the King in favors of ſome ſtatſman; ſo that it was not fully agreed, whither this letter meant a favor to the waffalls or not.

Eodem 5 Martij 1684.—At the Commiſſion for Plantation of Kirks, Aitkin, late Biſhop of Murray, now of Galloway, reducing a valuation of ſome teyndſ belonging to Dumbar of Grange; and it being alledged, The ſaid decret of valuation was null, becauſe nothing had followed upon it by the ſpace of 40 years, and it was præſcryved, becauſe it had never been during all that tyme extracted. It was answered, A minut of a decret was as weell a decret as if it ware extracted, and the ſignators ware warrand eneugh for it; and the Clerk-Register declared he would require no more but to find minuts in the register, which was warrand ſufficient for him to extend them. The Lords fand Grange ought to have the extra& of the ſaid decret, reſerving to the Biſhop all his other reaſons againſt the ſame of reduction, as accords of the law.

6 Martij 1684.—At Privy Counſell, ther is a debate betuen Sir James Cockburne and a feuar in Dunce, about the demolishing a feat in the kirk. No. 196, p. 60.

2^{do}. Item, Sir Andrew Ramſay of Abbotſhall, on an application to the Privy Counſell, gets a permiſſion (he being a Privy Counſeller) to goe to London about his private affairs; ſeing the obtaining the Duke of York's liſenſe, as Commiſſioner, was only for Miniſters or Officers of State, commanders and ſouldiers in the army, and ſuch as ware tied to a judicatory or bench, wheirof he was none.

3th. The lately deceased Mr. John Ramfay, minister at Markinch, his dotation and mortification of his lands of Dunyface in Fyffe to the Colledge of St. Andrews, making Balmaine and Abbotshall patrons to present the boyes, was produced by the Bischop of St. Andrews, to the Privy Counsell; that it might be furth cumming for the Colledge's behoof, and that the schoolmaster, (who had it in keiping, and gave it up after his death, it never being delivered by Mr. John himfelfe, nor did it bear a claufe dispenfing with it,) might be exonerated.

No. 198,
p. 61.

10 *Martij* 1684.—At the Criminall Court, Grier and other 2 are pannelled for the slaughter of Macclellan of Barscob. Alledged, Denying the fact, if they did it, it was in felfe defence, in so far as Barscob stroak him in the face with his hand, and so was the first aggressor; and he only threw him from him, wheirby his head brained upon the hearth stone. Answered, The aggression is not sufficiently qualified to infer necessar felfe defence; for that is only when one is *in discrimine vitæ constitutus*, which was not heir, by a buffet on the cheek; and law allows you only to kill, when you cannot otherwayes keip your felfe from being killed. Likeas heir Grier was the first aggressor, for he was beating a woman with child, and Barscob was taking him from hir. This is a large feild of debate. The Justices demurred long on it; but at last, on the 12 of March 1684, they repelled the qualification of felfe defence, and fand the aggression of a fingle cuff not a sufficient ground of provocation to kill; but fand this relevant to make Barscob the aggressor that he threw Grier the pannell doune over a stooll, and in the strugling he dashed his oun head against the stones. But the Chirurgians being examined, deponed, they fand nather contusion, fraction, nor wound; but that he was subject to the epilepsie. It seims to have been only a casuall homicide. The probation not being clear, the Affise clenged them.

No. 204,
p. 62.

13 *Martij* 1684.—At Privy Counsell, Mr. Ezekiell Montgomerie's case is tabled, (*vide supra*, page 48;) the libel is admitted to probation, and a committee named to examine the witneses against him. One of the articles the King's Advocat infisted much on was, that for money he had

brought of above twenty persons at the Circuit Court of Glasgow in June last, as having taken the Test before him; wheiras severalls of them never could write, and others of them refused yet to take it. His conjunct Shireff-depute John Atchison was also imprisoned; however, the Chancellor's party prevailed so far at this tyme, that Mr. Ezekiell was liberat at this tyme, upon my Lord Blantyre's being caution in 1000 mks.; but being at liberty, he fled; yet afterwards was apprehended in the Pleasants, besyde the Cowgate port of Edinburgh, and re-imprisoned.

14 & 15 *Martij* 1684.—One Rutherford, clerk of Jedburgh, is pershued for falsehood and forgery of fundry papers, by Provest Ainsly, Rutherford and other burgeses of that toune; and the Lords examined and confronted him this day in ther oun preface. No. 206,
p. 63.

17 *Martij* 1684.—At the Criminall Court, a warrand is granted in favors of Sir Hugh Campbell of Cefnock prisoner, and indyted to all Judges and Magistrats, to force the witnesses adduced by him in his exculpation to come in and depone, if they should refuse to doe it voluntarily; which was not in use to be granted to pannells formerly. No. 207,
p. 63.

2^{do}. *Item*, Richard Morray of Brughton is denounced fugitive, for not appearing to underly the law for the falsehood committed by him, in forging the deeds of lease and release upon Annandale's estate, against Sir Robert Creighton *alias* Murray. (See the Manuscript E for this, at the 14, 15, & 16 *Februarij* 1683.)

20 *Martij* 1684.—The case of the King's tradsmen, viz., Mr. Milne his mason, Calander his smith, &c., against the Magistrats of Edinburgh, is reported by Reidfurd; and the Lords finds the 153^d A&t of Parliament in 1592, and the 275^t A&t in 1597, and the other A&ts and exemptions given to thesse tradsmen, can only liberate them of taxes and burdens imposed by the Toune themselves by ther oun authority, or for ther oun use; as for bringing in the water to the toune by the pipes, making the hy-wayes betuen Leith, Edinburgh, and the Abbey, the mending the streets, &c.; (*Queritur*, If the paying this new company and guard may be classed No. 215,
p. 65.

among thir?) but that they cannot theirupon plead immunity from the King's ftenes and taxations; the A&ts of Parliament imposing theſſe bearing no exception of ther priviledge; and it's hard to give them now, ſeing, 1^o Theſſe A&ts ware made when the King dwelt among us, and they ware truely imployed in his adoes; but now it's meerly nominall, and they are titulars. 2^{do}. They are the beſt and richeſt in ther ſeverall trades, and it ware unæquall to free them, and lay ther proportions upon the poorer. (See Sir G. Mackenzie's, King's Advocat, his printed Obſervations on the 153 A&t, Parliament 12, James 6, 1592, p. 274.)

No. 216, *Eodem* 20 *Martij* 1684.—At Privy Counſell, the A&t is renewed diſ-
p. 66. charging the importation of Iriſh victuall, kye, or ſalt beeſſ, with many ſevere clauſes. (See it in print.)

2^{do}. One called _____ is perſhued by _____ Wilſon, for carrieng hir away from Perth, under the pretence of a caption for 5 lb. ſterling, to the Ile of Bute, to imprifon her ther, tho he paſſed by many royall priſons by the way; but the deſigne, they ſaid, was to raviſh hir, at leiſt to procure hir conſent to marry him, ſhee having right, by hir father, to ſeverall tenements in St. Johnſtoun. It's committed.

3^{tio}. Morray of Polmais perſhues Seton of Touch, for ryotouſly throw- ing doune a feat in the Church of St. Ninians beſyde Stirling. Alledged, It was a common feat, and he had the Seſſion's warrand for it. This was referred to a committee.

No. 221, 24 *Martij* 1684, being Moonday.—*Item*, 25, 26, and 27 *Martij* ware all
p. 67. taken up in the criminall tryall of Sir Hew Campbell of Cefnock for treaſon. The King's Advocat firſt craved that the Criminall Lords might take a præcognition what the witneſſes for the King could ſay, conforme to the power allowed by the King's letter, in ſuch caſes, ere they ſhould begin his tryal. Alledged for Cefnock, 1^o This ware *pro- dere teſtimonium*. 2^{do}. It could not be now done, ſeing the very day of the pannell's appearance was come. 3^{tio}. They could not præcognoſce even by the King's letter, without a warrand from the Privy Counſell. Whereupon a Counſell was inſtantly called extraordinarily, and they

authorized them; and accordingly they examined the witnesses upon oath, as to what they could say. (Thus making all fare, as they thought; but heaven had said otherways at this tyme.) As to the first objection, it was remembered, that lately in a cause of Mr. Charles Lindsay minister at Covington, against the Laird of Cunyghamehead, in regard Mr. Charles had tane the declaration of some witnesses under ther hand, bearing that they would say the same if they ware upon oath, the Lords fand, that he could not lead nor adduce thesse as witnesses for him, *ob proditionem testimonij*, by the said pre-ingaged declaration tane by a privat person, without any warrand; and Durie marks a decision on the 14 of July 1621, betuixt Leviston and Galloway, wher the Lords so far disapproved such extra-judiciall declarations, that they imprisoned one for taking them.

Then on the Tuesday the 25^t, the debate began; and it was alledged, That what was libelled against Cefnock the pannell, ware at most but treasonable speeches, and so ware expressly pardoned in the Indemnity granted in July 1679. 2^{do}. It was positively offered to be proven that he was *alibi*, and not at the bridge of Galston, all that day he was libelled to have uttered thesse words. 3^{tio}. *Non constat* they ware rebels; they nather being denounced fugitive, nor declared traitors; and as for treasonable words, the laws of all nations hes regarded them litle. The Roman law sayes, *Lubricum linguæ ad pœnam facile trahendum non est*, l. 7, § 3^{tio}. *D. ad Legem Juliam Majestatis*, and the *lex unica C. si quis Imperatori maledixerit* puts very favorable and charitable constructions on such escapes; *item*, Sir Edward Cook, one of the great judges of England, in his 3^d part of the Institutes of the Law of England, Title of Treason and Misprision of Treason, quotes cafes, wher with them seditious words ware found not to infer the cryme of treason. But Perth Justice-Generall minded, that by A&ts of Parliament in England, since Cook's tyme, viz., since this King's restitution, anno 1666 it's declared, Treason may be committed in words; and thus Edward Stalley goldsmith was condemned and execut for treasonable words, at the tyme of the breaking out of the Popish plot in 1678. Yet our oun A&ts of Parliament, before the year 1661, ware not so expresse against such words, except that species of

leifing-making betuen the King and his people ; and the 2 A& of Parliament in 1662, as it requires that fuch expreffions be deliberat, advifed and malicious, fo it declares, that for fome forts of rash and reflecting fpeeches on the King's government, they fhall not be perfhueable after 8 moneths tyme. And wheras the King's Advocat answered, That the treasonable words libelled againft Cefnock, ware " counfell and advife," and fo is not *nuda verba*, but airt and part of treason, falling under theffe words, *ope et confilio* : It is replied, *Efto* it ware treasonable counfell, (which is denyed,) that is no more but treasonable words, and not airt and part of treason ; feing thir words ware not previous to the rebellion, but it was already formed ; and by this we would confound the limits of two different fpecies of treason, the one confifting in *nuda emiffione verborum*, liable to miftakes, efpecially of mean peeple, fuch as thir witneffes are, unleffe they had redacted the precise words uttered into writing immediatly after they heard them. And lawyers make a great difference betuen words that of ther oune nature tend to the commiffion of a cryme, and fuch as *non causam fed occafionem tantum delinquendi præbent* ; wheirof Antonius Matthæus, in his Criminall Commentar, *Titulo de læfa Majestate, cap. 2, num. 11, pag. mihi 324*, gives a prægnant instance, in *centurione quodam*. 2^{do}. *Nudum confilium*, unleffe it be *cum inſtructione aliqua*, is not art and part, but ftill bare words ; for Cefnock nather inſtructed them with money, armes, nor ammunition, nor with advife how to manadge the war, wher to fall on firſt, what paſſes, bridges, or forts to ſecure ; which lawyers call *ordinatio, tractatio, or apparatus ad bellum* ; without the doing of which the pannell cannot be repute a contryver of the rebellion, fo as to be drawen under the exception made in the A& of Indemnity in July 1679 ; and of this *nudum confilium ſine inſtructione*, ſee *Vinn. in Commentario, ad § 11, de ope et confilio, Inſtitut. de obligationibus ex delicto ſeu de furtis*, and the laws ther cited by him and others ; *item, Tit. D. de fundo inſtructo legato*. Sir George Lockhart, (whom the Statſmen had oblidgeed to joyne with the King's Advocat to ſecure all againſt the pannell,) argued, That theffe rebels who came out of Galloway, after the rebels ware up, to fortify and aſſiſt the rebellion, ware as guilty of contriving as they who began it in Lanrickſhire ; for it was *in curſu*, and had

tractum futuri temporis; and [that] contriving is not *actus momentaneus*, nor done only *in ictu oculi*; and in construction of law *mandans homicidium vel aliud delictum, eadem pœna tenetur qua mandatarius*.

Item, It being alledged for the pannell, that thesse words of the libell ware not relevant, "that Cefnock spoke thesse or the like words," this alternative being too generall; and the King's Advocat contending he was not bound to condescend what the like words uttered by Cefnock ware; it was replied, That this ware to make every common fellow who is adduced to be a witnesse or to be ane assiser, judge what words are synonymous, and of ane æquipollent signification, though that be a theme which hes troubled the greatest critiques. And wheiras the King's Advocat endeavors to elide the 126 A& 12 Parliament, James 6^t; and that he neids not say thir parties ware denounced, becaufe Cefnock had a more certain knowledge out of ther oune mouth of ther being rebels, then any such denuntiation could have given. It is replied, Wher the law hes fixed on a solemnity, privat knowledge does not supply it; as we see in the case of intimations of assignations, and many others; *et id tantum scimus quod de jure scimus*; and ther saying, they came from Towcorse Park, could not make him instantly æsteim them rebels, seing that they might have been ther by restraint, or other necessar and excuseable occasion, or might have come away in obedience to the Secret Counsell's proclamation, commanding thesse rebels to lay doune ther armes; so that ther saying they came from that army, does nowayes take off the A& of Parliament above cited in anno 1592. And wheiras his Majestie's Advocat alledges, that the defence, offering to prove that the pannell was *alibi*, is not relevant; 1^o Becaufe its contrare to the libell, and may infer perjury against his witnesse. 2^{do} The distance of the 2 places, as the Bridge of Galston and Cefnock's house, (where he is alledged to have been all that day,) is not so great but he might in a short tyme been in ather of them, being but halfe a mile. It is replied, That in many cases, defences contrare to the libell are sustained and found relevant; and it's impossible in law that it can be otherwayes; for *in pari casu pro reo est respondendum*. As for instance, a man is conveyned *pro homicidio deliberato*; he founds his defence and exculpation, that ather he killed in

selfe defence, or, it was a casuall homicide, according to the late A& of Parliament in 1661. This defence, tho contrare to the libell, hes, by the laws of all the Christian world, ever been receaved and admitted. To the 2^d, Whatever be the distance of place, this is *propositio æternæ veritatis*. Cefnock was in his oun house all that day of June 1679, when Crawford, Ingram, and Fergusson past by the bridge of Galston; *ergo*, he was not then at Galston Bridge; and which consequence is so deeply rooted in nature, that it's *præsumptio juris et de jure*; and till we renunce both our sense and reason, no conviction can perswade us the contrare; and this demonstration is confirmed by no less authority then the testimony of ane angel, who argues the disciples into the beleiff of a resurrection by this *enthymeme*, *Surrexit Dominus, est alibi; ergo non est hic*; and yet heir our Savior was at no great distance, for *magis et minus non variant speciem* in such cases: and it's as infallibly true that Cefnock was not at the Bridge of Galston, if he can prove he was at his oun house that individual hower he is alledged to have been at the bridge, as if I should prove he could not be that day at Galston, because he was at Rome or Paris, or 1000 miles distant from it; and ther can be no fallacy nor abuse heir, wherby rebels can escape, for his Majestie's Advocat condescending on the precise day, it's positively offered to be proven [that] all that day he was in his own house; and that the pershuar is oblidge to condescend on the day of the committing the cryme, if the pannell require him to doe it, is a principle acquiesced into by the common sentiments of all criminall lawyers. But Sir George Lockhart denyed he was bound to doe it *in crimine majestatis*; and required *impossibilitas naturæ*, that they could be in both places in one day, to make a relevant *alibi*, and that in Mr. William Somervell's case, *item*, that of McNeill of Bara, &c., the Lords fand ten miles not a sufficient distance to infer an *alibi*.

The Justices having advised the debate, they repelled the haill defences, and fand the words libelled to have been spoken by Cefnock to be such treasonable counsell as is not meand to be pardoned or included in his Majestie's indemnity; and particularly repelled the *alibi*, as it was qualified and circumstantiated, the distance betuen the 2 places being but

small; and sustained the 2^d additionall libell, about Cefnock's harboring and resetting rebels on his lands, as an aggravation only of the first libell. This interlocutor did not passe without some heat among the Justices. Then a bill was given in for the pannell, desiring, since his Majesty was the best interpreter of his meaning in making that Indemnity, (tho we know, as I have marked alibi, it was designed more to secure Lauderdale's party than the West-country people,) that the interlocutor might be stopped till they consulted the Prince, conforme to the appointment of *lex* 9, and l. 12, *in fine C. de legibus*. This bill was refused.

The witnesses being called, it was objected against Ingrahame, 1^o, That *prodiderat testimonium*, because both Major White, and the King's Advocat, had examined him, and he had revealed to them what he had to say. And tho the Justices are impowered to examine beforehand, yet even they must have, by the King's letter, (recorded the 8th of Januar 1683,) a warrant from the Privy Counsell; and others cannot doe it at all. 2^{do}. *Est socius criminis*. 3^{to}. *Est vinculatus et carceratus*, being kept prisoner in Edinburgh Castle. *Vid Stat. 2, Rob. I. cap. 34, de his qui prohibentur testimonium dicere*. 4^{to}. It is offered to be proven he bears Cefnock at enmity and grudge; and the forsaide statute makes it enough to cast one from witnessing, that he is *malevolus parti*; and all lawyers make *inimicitiae* a good exception; even tho the witness were *in articulo mortis, vel nuper sumpserat sacratissimam Eucharistiam*. . . . And this Ingram threatned he should doe Cefnock an ill turne, if it ware out of hell; *flectere si nequeo superos Acheronta movebo*. 5^{to}. The said Ingelramus cannot be admitted, because it's offered to be proven he was suborned by Hew Wallace, Chamberlain to Sir William Wallace of Craigie, and he himselfe was indeavoring to bring over and practise on Adam Miller to come to Edinburgh, and depone as he did; and gave this reason of it, that they owed Cefnock no favor; because if he, and others like him, had come out and helped them at Bothwell-bridge, they had not been default as they ware.

It was answered for the King, to the first, It was no *proditio testimonii* for them to tell what they knew, or to reveall the truth, unlesse they had instigated the plea, and informed in order to an accusation, that they

might bear testimony; and ther deponing was not voluntar, but by publick authority; and Sir John Nisbet, when King's Advocat, was in use previously to examine witnesse; and ther former depositions should be cancelled and torne. And which being accordingly done by the King's Advocat, in presence of the Court, it contributed to Cefnock's escaping at this time. To the 2^d, *Socius criminis* is no objection in treason, wher any person almost is a habile witnesse. 3^o *Vinculatus* is when one is in prison for a crime, but not wher they are only in custody, and sequestrat, to evite corruption from the pannell's influence. To the 4th, *Non relevat*, unlesse it ware *inimicitia capitalis*, and that the ground of it ware condescended on, and proven to be a mortell feid; and to the authors cited, he opponed a lawyer, (whosse authority in criminalls yeilded to none of them,) viz., *Julius Clarus*, § *finale quæst.* 24, who was clear on the point; and *Statuta Roberti*, mentioning *malevolos parti*, most be understood *habiliter, in terminis juris*, of a mortal malevolence; and the words spoke ware only in passion, and not a permanent hatred; and *out of hell* may signify, providing the revenge be not by unlawfull means; and Ingram was content to purge himselfe of any malice: and it is more then 3 years since they are alledged to have been spoke, and so may justly be presumed to have been now digested and forgot; *et dissimulatione et reconciliatione tales injuriæ verbales facile tolluntur*. To the 5^t, Subornation *non relevat*, unlesse the pursuars, or some others having interest in the cause, ware the suborners; which Hew Wallace was not. 2^{do}, They most say the subornation took effect; for attempting to doe it, tho it may give a ground to punish the attempter, yet *non relevat* to cast the witnesse, especially wher it's only ane attempt to bribe another witnesse in the cause, but not this now adduced. Yet Jos. Mascardus, *voce Subornatio conclus.* 1347, makes even that a great presumption. And at that rate, pannells, of purpose to set [aside] witnesse, may cause offer them money by ther freinds. And indevors used to search and find out witnesse against rebels, and to draw out of them what they can say, (they being in the west-country most averse in discovering thesse things,) must not be called corruption, seing without such prudent methods they shall never find witnesse. 3^o Subornation in generall, *non relevat*, unlesse the

quantity of the money or other good deed be condescended on, that it may appear to exceed the witnesses expences, or his damage *ex operis amissis*, by his attendance, both which may lawfully be remunerat to witnesses without incurring the *nota* of bribery.

Replied for the pannel, That the 1^o three objections are conjoyned, *ut quæ non profunt singula multa juvent*. As to the 4^t, a mortall hatred may arise from a very slender ground, and a punctilio of honor; and we see daily, for a cuff or a lie, combats foughten and slaughter committed; and tho thir resentments doe not often possesse mean people's breifts, yet some tymes they doe; and informative we condescend (tho not bound to doe it) upon the cause of Ingram's malice against Cefnock, because Ingram having beat one Wilson, who dyed of it within 8 weeks, Cefnock by a letter delated him to the Shireff of Air, wheiron Ingram vowed him this mischief; and the lenth of tyme does not sopite or induce oblivion in revengefull men. To the 5^t, *Non refert* who corrupts; and finds it relevant that any from Cefnock offered to debauch them. 2^{do}. The very attempting to corrupt a judge or a witness is unlawfull, and leaves a suspition of impressiõ. 3^{tio}. It ware impossible ever to cast a witness on subornation, if the precise summe behooved to be condescended on, for that only arises from the probation; and the offering of a dollar to a poor man is as tempting and great a bribe as 100 dollars is to a rich man; and if Ingram got money, he most tell some other cause wherfor he got it.

The Criminall Lords, after a long debate among themselves, did, by ther interlocutor, repell the three first objections made against Ingrame; and, before answer to the tuo last, viz., the enmity and subornation, (the first act before answer, I think, [that] was made in our Criminall Court, wher alwayes the relevancy most be discusst, but the King's Advocat's assessor, S. G. Lockhart's authority against Cefnock, in asserting ther was no weight in the objections, shook the Lords very much,) they declared they would hear our witnesses for the pannell, to prove thesse 2 last objections, if they spoke probable and consistent things, or if they ware but seduced to help Cefnock of at this dead-lift, (as they jealousd,) and only to disparadge the King's evidences. And tho, at first, they

aggreed to examine them on oath, yet, by Sir G. Lockhart's moyen and authority, they would now only hear ther declarations, not upon oath; and, albeit all pains was taken to expiscate circumstances, to cause them vary and titubat, yet Herries and Gaudy declared positifely, they heard Ingram threaten Cefnock ane ill turne, if it ware out of hell. But being examined *separatim*, in regard they discorded in some circumstances that ware not materiall to the *dictum testis*, the main part of the testimony, as the hower of the day, and place of the house wher they heard it, &c., the Earl of Perth Justice-General rejected them; tho Jo. Mascardus in his *Conclusiones Probationum conclus.* 1180, *voce pluralitas*, num. 14, gives an easy rule for reconciling such seeming discrepances *inter testes*. Then the witnesses about the subornation, ware adduced, who proved against Hew Wallace, Craigie's Chamberlain, drinking with them till they were drunk, with other sneaking practises, but nothing of bribery directly; because the Justices would nather grant a safe conduct to bring in a fugitive rebell, viz., one Adam Miller, to be a witnessse for the pannell, (the Court never having allowed that practise;) nor permit witnessses to be examined anent tampering with the said Adam, he being none of the witnessses adduced for the King. And it being complained on that the guards drank on the 2 witnessses led against Cefnock; and tho sometymes *in vino veritas*, yet men are very unfit to depone when drunk. It was denied that any such thing was allowed; and prohibite to be done for the future. And the witnessses ware ordained to be keiped fundry one from another, that they might not compare notes together, nor know what one another said. However after all this prævius tryall tane upon the 2 objections against Ingram and Crawford, of malice and corruption, the Justices fand no sufficient matter to repel them; and therfor ordained them to be receaved. After this Cefnock's Advocats protested for a reprobator of ther testimonies, which is not usual in criminalls.

This was now about 11 a'clock at night, and when the King's Advocat, and that party, thought all was fixed and sure, the Divine Providence, that over-rules all from above, snatched the prey out of ther teeth at this tyme. For the witnessses, (who ware so weill prepared, and had so oft renewed their lesson, and got it inculcated, having twise de-

poned on the individuall specifick expreffions that Cefnock had to them, to encouradge them to goe back to the rebell army,) when it came to the push, by a miraculous confternation, both Ingrame and Crawford did not remember that Cefnock had any fuch expreffions to them as ware libelled; ather reprooving them for leiving the West-land army, or bidding them returne, and ere long they fhould nather want help nor heads, &c. Upon this the *mobile* in the Court gave a great fhout; at which the King's Advocat and Justice-General stormed, and faid theffe ware very difloyall and indecent acclamations; the like wheirof had never been feen in Scotland, but was Shaftesberrie's way in England, in carrieing on his bufineffe with the *ignoramus* juries, and to dafh, terrify, and confound the King's evidences and witneffes. The King's Advocat preffing Ingram twife or thrice to give a categorick answer to the expreffions, Alexander Nisbet of Craigintinny, Sir Patrick Maxuell of Springkell, Somervell of Drum, and others of the affise, complained why fuch pains fhould be taken to wring and elicit a testimony, when he had fo often already told that he did not remember the expreffions. And they being reproved for meddling too much, they boldly replied, that the probation concerned them and ther consciences, to fee it ware fair and æquall. Cefnock himfelfe objected againft Daniell Crawford, that his name was not given him up in the lift of the witneffes, conforme to the laft article of the A&t of Parliament, regulating the Justice Court, in 1672, but one Daniell Carmichell. Yet he was receaved; becaufe the King's Advocat had threatned, in the beginning, to continue the diet againft Cefnock for 2 weeks, if he did not paffe from that objection, which only happened throw miftake; in which cafe, all Cefnock's witneffes for proving his exculpation, would have gone home, he having detained them fo long in toun from ther labouring and fowing, with a great deall of difficulty and expence, and therfor Cefnock's lawyers paff from it: but he alledged [that] ther renuntiation of it could not prejudice him; yet he could not reclame, for they had his warrand for it. The King's Advocat alledged againft feverall of Cefnock's witneffes, that they could not be receaved, becaufe ather they ware not given him in in lift *debito tempore*, or ware Cefnock's tennents, or ware not right defigned,

&c. When his oun witnesses failed he fell into a great impatience, alledging that this would incourage all rebellion hereafter, for the King and the Country should never get witnesses to prove treason in the West ; because the West-land people thought it no sin, upon oath to conceall the discovery of treason. And tho, in law, his 2 witnesses could not be overtaken on perjury, because ther former depositions ware cancelled, and it was declared, to put them in freedome, that, whatever they said now, the first should never meet them, yet *in foro poli*, and before God, they are guilty of grosse perjury, and deserve to be declared infamous ; for one of ther 2 contradictory depositions is certainly false. Cefnock said 3 things co-operated to the staging him, 1^o His surname of Campbell, for his Cheiff Argile's sake. 2^{do}. His persuasion, as being reputed a strict Presbyterian. 3^{tio}. His Estate. But in this last it was alledged they ware mistaken, not knowing he was denuded of the fee of all, (save 3000 mks.,) in favors of his eldest sone by his contract of marriage, and he confirmed, long before the emitting the treasonable words. It was observed both the factions concurred against him, the Treasurer because (as they said) he had lands neir his, the Chancellor because he had been on his Father's assize in 1644, tho Cefnock denied it.

The assize having inclosed neir one a cloak in the morning, they, in a short tyme clenged him, and brought him out Not Guilty, ther being no probation against him. Yet he was remanded to prison, because the Duke of York had a very bad opinion of him, and suspected he was upon the late English phanatique plot, which broke out in June 1683 ; on the jealousy wheirof he was apprehended and imprisoned at London, and he, the Lord Melvill, Sir John Cochrane, &c., ware branded as being come then to London to join with the English rebels ; but as they could make nothing of this out upon Cefnock, so it was not so much as touched, or insert in his criminall libell, as an aggravation or a presumption to inforce a credibility of his guilt in uttering these expressions. And really they who knew how cautious and prudent a man he was, ware satisfied with the event ; for they could never obtaine from themselves a belieff that so foolish and insignificant a thing could escape him, as to give such treasonable counsell to 3 mean fellows accidentally on the

hy-way; wheras, (if he had been inclined,) he could have done that party more effectually service another way; but God thought fitt to disappoint the designe of forfaulting him at this tyme. But they, having strong suspicions of his guilt, and hoping to reach him on some other head, did still detain him prisoner.

This tryall lasted longer than Argile's, Blaikwood's, Mr. James Mitchell's, or any since the King's Restoration; for it took up a day and 3 full afternoons. It was not so much as proven that the persons he was alledged to have spoke with at Galston Bridge, ware, or had been in the rebellion; and the King's Advocat adduced no probation anent the harboring contained in the 2^d additionall libell; and he past from the 3^d indytment, of his dissuading his tennents in Balgray from taking the Bond; and his being at the buriall of one Captain Campbell a rebell, who was drowned in the water of Iruing. They ware so enraged, that they brought the 2 witnesses who had failed them, out of the Castle, and put them in irons in the Tolbuith of Edinburgh; and alledged, Cefnock's freinds had corrupted them to goe back of what they had so clearly deponed formerly. The King's Advocat threatned he would pershue Craigintinny, and some of the Assysers, as guilty of a ryot in carrying themselves tumultuously at the tryall, by disturbing the Court, and dashing and confounding the King's evidences; but they deny any thing wheirin they exceeded ther duety. This disappointment drove them to great extremeties; for it was reported that Perth, and the Treasurer-depute his brother, had assured the King and Duchesse of Portsmouth, that they had sufficient grounds wheiron to forfault Cefnock, and that one of her sones by the King was to get the gift of his forfaultor; and they did not think he was denuded of so much in favors of his sone. Others said, the Earle of Dumbarton was to get a part of this forfaultor.

On the 3^d Aprill 1684, they brought downe the 2 witnesses, Crawford and Ingram, to a Privy Counsell held in the Abbey, and ther they abode positively at what they first deponed of his guilt; and being asked why they refused at the bar, they answered, that they ware dashed, confounded, and nipped, every one murmuring in their ear, "What, will you by your

fwearing take the honest old man's life?" This declaration was given after they ware keiped 5 dayes in the irons. Then the Counsell gave order to raise a libell against Alexander Nisbet of Craigintinny, Sir Patrick Maxuell of Springkell, and Somervell of Drum, 3 of the affisers, for ther misbehavior; and named a Committee of, viz., the President of the Session, Register, &c., to revise the debate made by Cefnock's lawyers, and to excerpt, if there ware any treasonable, indecent, or dangerous expreffions in it; and the Justice Generall caused raze out the latter part of the interlocutor, sustaining the 2^d additionall libell anent his resetting rebels as ane aggravation; and did insert a declaration of the King's Advocat's, just before the interlocutor, that he passed from the 2^d and 3^d additionall indytments only *pro loco et tempore*. This alteration was said to be made contrare to what was trully done; that they might yet raise a new indytment against Cefnock for thesse things, as if it had not been tried already; to the effect, by this or some other mean, that they may get him yet forfaulted if possible.

It was expected that Sir George Lockhart, and the King's Advocat should have debated that point, That the pannell's running to the A&t of Indemnity was ane acknowledging of the cryme, like the using a private remission; but it would seime they did not think this argument tenible in law, and so did not urge it; and the King's Advocat's oune opinion is contrare, both in his Criminalls, and in his short Institutions of Law.

No. 226, 27 *Martij* 1684.—At Privy Counsell, the Parliament is adjourned by
p. 75. proclamation from Aprill, (in which it was to have fitten,) to the 9^t of September nixt.

No. 227, 28 *Martij* 1684.—Being Good-Friday, or the day of our Savior's Passion,
p. 75. it was observed so that ther was no session keiped, but the Lords went in their gouns, and heard fermon. It is enjoined (by the 1 A&t of Parliament in 1621, ratifieng the 5 Articles of Perth,) to be keiped as weell as Chriftmas. The Session thesse 40 years past had not occasion to notice it, because they sat not in March till the [7th] A&t of Parliament in 1681, taking away the Summer session, in place of it added March to

the Winter fession, and the Passion week falls oftner to be in Aprill, tho this year it fell in March. The Prefident was for fitting that day, but the Bischops opposed it, and said no Christian communion or judicatory in the world fate on that day; yea, even the Turks keiped it, Friday being ther Sabbath.

29 *Martij* 1684.—The King's remission to the Earle of Lauderdale No. 229, and his sone came doune; but a letter cloged it with 2 qualities, ^{p. 75.}
1^o That he should perfyt his disposition to Claverhouse. (See anent them, *supra* pag. 55.) 2^{do} That he should discharge his recourse of releiff against Sir John Falconer, and the other officers of the Mint; and boor peremptorily that thir should be performed within 8 dayes after fight; and if they ware delayed, (which his Majesty would not beleive,) then the remission not to be past the fealls.

VACANCE.

Primo Aprilis 1684.—At Criminal Court this day, and the day after, No. 231, the dyet is deserted against George Ramsay of Idington, and fundry ^{p. 76.} others, who had been conveyined in the Circuit Court, and imprisoned, for harboring and refetting rebels, and who had been liberat on caution. But the King's Advocat declared, he intended to pershue them at Privy Counsell, for ane arbitrary fine, conforme to the King's proclamation of the 13^t of Aprill 1683.

Eodem die.—At Privy Counsell, ther is a libell exhibited by the No. 231, Countesse of Monteith, and ownd by the Marquisse of Montrosse, and ^{p. 76, § 2.} Robert Roffe of Auchlessan, against the Earle of Monteith for bigamy, in marrieng Catharen Bruce, Blairhall's sifter, before he obtained a decreit of divorce against his lady; and which he got done by bribing one Udney parson of Holy-Iland, in England, to marry them.

3 *Aprilis* 1684.—At a Privy Counsell in the Abbey, the 2 witneses No. 232, against Cefnock ware brought doune, and examined why they had ^{p. 76.}

prevaricated and refiled; they confidently declared, that what they had said first in the præcognition, asserting him to be guilty, was the truth, and that they were dashed and confounded when they were brought to the bar, some nipping their legs, and others frowning and murmuring, What, would they take that old man's blood on their head?

2^{do}. At this Privy Counsell, the Hy Treasurer moved, that seing Mr. William Ker, the young Earle of Roxburgh's unckle, (who was Shireff of Tivedale,) was dead, that it was fit that the said shire should not suffer in the long vacance for want of justice; and, therfor, that one might be recommended to the King to be Shireff, in the Earle's minority; and he and his party proposed Macdougall of Mackerston, one of the Earle's tutors. The Chancelor told, he beleived ther would be a commiffion shortly doune from the King, giving that place to my Lord Ballantyne [Bellenden], the child's unckle, and so a nearer relation; and whatever might be said against him, as to manadging, Ker of Graden, the depute, would be answerable. The Hy Treasurer storned much, that this privy recommendation should have been sent without consulting the Juncto, contrare to the King's injunctiions, that applications should come from them all. Yet Duke Hamilton whispered, that that was like the year 1649, to limit the King to receive addresses only by such and such persons: however he was none of the Juncto. And within a post or 2, Ballantyne's commiffion arrived; but † he keipit it not long.

(† The Earle of Roxburgh got only the shireffship of Roxburgh and Tivedale, on the Duke of Monmouth's refusing the test, and the Duke had it only since the King's restitution; but Douglas of Cavers was heritable Shireff of old, and now the King hes given it again to this Cavers, *durante beneplacito*, and he hes chosen Pringle of Rowiston, and Mr. Richard Douglas, Advocat, his Deputes in August 1684.)

No. 233, *Eodem tempore*.—The Lords of Session had meetings every day as
p. 76. Commissioners to Argile's forfaultor, (see of it *supra* pag. 52,) and quite altered the former cast, to bring in great men, (such as the Marquisse of Atholl, Lundy, Treasurar-Depute, &c.,) who had assignations, for litle or nothing, to Argile's bonds for 100,000 lib Scots, from people that had

no moyen, so that other poor creditors, for upwards of 150,000 mks, are expunged totally and left out.

5 *Aprilis* 1684.—Masters Robert Scot, and Lumisdean, Ministers No. 234, at the Abbey of Halyrudhouse, by infligation of the Bischop of Edinburgh, p. 76. in pike to the present Magistracy, exhibit a petition to the Privy Counsell, craving, that ther stipends may be made as great as the Ministers of Edinburgh are; viz., the 1st Minister, 2500 mks, (who hes now but 1500 mks;) and the 2^d to be made 2000 mks; and for that effect, that the Magistrats of Edinburgh, (who are Barons and superiors of the Cannogate,) may take the collecting of the annuity and reikpenny of the Cannogate and landwart parish, in ther oun hands, and be personally liable to them for ther stipends: against which the Magistrats reclaimed, as not concerned in the smalnes of ther stipend, and that the Ministers of Leith and West-kirk might pretend the same. Yet the statfmen, (who frequented the Abbey Church,) referred it to a committee.

8 *Aprilis* 1684.—This was the dyet to which the Earle of Loudon, the No. 235, Lord Melvill, Sir John Cochrane, and his sone, ware cited, on 60 dayes, p. 76. because abroad. Melvill's cryme libelled was, Acceffion to the rebellion at Bothuel-Bridge, by treating, parlying, and keiping correspondence with the rebells ther. But the most of this they could prove, was his sending a message to Mr. John Welsh, and the other Ministers, bidding them lay doune ther armes, and come in the King's mercy. Now even such communication as this is not safe, without a warrand from the King, or his Counsell, or the Generall, to doe it. Some say he had the Duke of Monmouth's licence and commission for it. Testificats were produced from Drelincourt and other physitians in Holland, that Melvill and Loudon ware indisposed; besides, Loudon durst not come home for captions and debts. Alledged the testificats are not probative, not being also from the Magistrats of the place wher they stay, nor the granters examined upon oath as to the truth of the excuse. The Justice Court being to proceed according to ther forme, ather to lead probation against them, (which, in absence, by the 11^t A& of Parliament in 1669, can only

be done in the case of actuall ryfing in armes,) or else to denunce them fugitives; the Privy Counsell, upon a bill given in to them in ther behalfe, recommended to the Justices to continue the dyet against them for some competent space.

2. So, accordingly, on the 9th of Aprill, the Counsell's recommendation being red in the Criminall Court, the Justices continued the dyet against Loudon and Melvill, till the 2^d Moonday of November nixt; and ordained them both to find caution for ther appearance then, the first Tuesday after Michaelmasse, otherwayes to be declared and denounced fugitives. But the Justice-Generall and King's Advocat gave 3 generall advertishments, 1^o They ordained by ane A&t, that they would heirafter admit of no certificats anent ane absent pannell's sicknesse, whither they ware abroad or within the country, tho they ware upon soull and conscience of the attesters, unlesse they ware also under the hand, and broad seall, of the Magistrats or Burgo-masters of the place wher they stayerd, bearing that the physitians had compeared before them, and had deponed anent it. And that by the old Adjournal-books it appeared, no other certificats used to be admitted as excusations and *essoignies* in criminall cases, but wher the Minister, Elders, Physitian, and witnesses compeired in the Court, and deponed therupon. And what knew they that the testificat produced for Melvill was Drelincourt the medicine professor at Leyden his hand writ and subscription, or how it was impetrate by money; and if one might not, by some means, (which can be done by art,) procure and draw on upon themselves a fever for 24 howers, that so a physitian might declare it; and tho, in the Circuit Court, they sometyme admitted such certificats, that was only because of the great multiplicity of businesse that forced them to continue causes their; but they would not doe so heirafter. The 2^d caveat was to Affysors; that tho by A&t 91, in 1587, they might modestly informe themselves of any doubts, yet they behooved not insolently to direct the Justices. This was levelled against some of Cefnock's Affysors; and he now intimated and required the Clerks of Court, and Maiffers, to be ready to advert to any disturbance should happen in the Court, that they may be able to bear witnesse for the King, when he adduced them. And as to Affysors who absented themselves, he declared

it would not be ther fyne of 100 mks. that would bring them of : fee A& 76, in 1587, and A& 166, in 1593 ; but he could pershue them for consequentiall treason, by suffering rebels to escape unpunished, by ther not attendance, which was a tacit favoring of rebels. The 3^d reprooff was to the Advocats who pled for pannells, (this also looked asquint to Cefnock's lawyers,) not to adventure to justify crymes, or to palliate rebellion ; for the preparative was bad ; seing thesse restless mutineers would poison our posterity, by printing what made for them in thesse debates.

Eodem, 8 Aprilis 1684.—At Privy Counsell Sir Patrick Maxuell of No. 236, Springkell, Alexander Nisbet of Craigintinny, and Hew Somervell of p. 77. Drum, are pershued by his Majestie's Advocat for a ryot, in disturbing and interrupting the Court in Cefnock's tryall, *supra* pag. 72, and for confounding and dashing the witnesses in ther deponing, and making a noice and confusion in the Court, contrare to the honor and gravity theirolf. Alledged for them, that Affisers are judges to the probation, and by the 90 and 91 Acts of Parliament 2, James 6, in 1587, *ad informandam suam conscientiam*, they may ask questions at the witnesses, or Lords, for clearing dubious points ; and all they did was, the witnesses having twife or thrice upon oath declared they had no more to say, and remembered no more, they thought it was not fitt to presse or urge them any farder. The King's Advocat alledged, the witnesses only stopped and demurred a little, being dashed ; and in that case the Justice-General might very lawfully interrogat them farder, what they knew more ; and thesse West-land witnesses are loath to tell the truth of rebels, till they be pressed to it ; and the assysors exceeded ther duety in offering to stop this expiscation, and attempting to teach the Justices ther duety ; and they gave occasion to ane irregular and tumultuary noice that was raised in the Court. The Privy Counsell repelled the defences, and admitted the libell to probation ; and the King's Advocat led the Criminall Lords to be witnesses of it, at which they ware very ill pleased. All this was done to palliat the affront they had suffered by the witnesses miscarrieng ; and some said, if assysors ware thus used, it would make ther office very troublesome, and few would serve in that capacity.

2. Then, on the 11th of Aprill, the King's Advocat tabled it again at Privy Counsell; and he having led Mr. Thomas Gordon, clerk to the Criminall Court, and Captain George Drummond, merchant in Edinburgh, and one of the Affysors, to be witnesses of ther misdemeanor in the Court; and they, having deponed litle or nothing, the Advocat was much offended. However the 3 Affysors ware moved to give in a bill to the Privy Counsell, declaring they ware sorry offence was taken at their carriage, (for ther may be *scandalum acceptum* tho not *datum*,) and that they designed nothing but loyalty, and his Majestie's service, and should demean themselves duetifully in tyme coming. This slender acknowledgement was accepted of ther hands, and they were called in, and told that the Privy Counsell had that good opinion and character of them, that what they did was throw ignorance and mistake; and therfor they pardoned it, but appointed them to declare the same before the Lords of Justiciary at ther first meiting in Court.

No. 237, *Eodem 8 Aprilis 1684.*—The ouners of the Cloath Manufactories, and
p. 78. the merchands and trades of Edinburgh, have mutuall complaints against one another, that the merchands did undersell them, by stealing in English cloath that was prohibite. The merchands again pretended, that it was the manufactories that imported the said English cloath, and sold it as if it had been made by themselves; and craved, that the taylors, glovers, and other trades, might be discharged to enter, visit, and search ther chops and booths for made work, at leift to carry away whatever they could find, so near as by the reach of ther arme frome the door they could apprehend it, seing, under the pretence theirow they accused them upon other heads. The libells were admitted to probation.

No. 238, *Eodem die.*—The Earle of Kintore, and other heritors upon the river
p. 78. of Don, give in a complaint to the Privy Counsell against the cruive masters of the salmond fishing below them on that water, neirer the sea, and particularly the toune of Aberdeen, alledging they doe not observe the A&ts of Parliament anent the hecks and the Saturdayes flop; as also against Sir Alexander Forbes of Tolquhoun, that in his milne damme

he does not keip the mid stream. The Lords ordained probation to be led if the defenders had contraveined the A&ts of Parliament anent cruives ; and if Tolquhon's milne will have sufficiencie of water to goe if he leive a mid stream. The witneses being all in toune, and presently examined, the Lords advised it on the 10 of Aprill ; and the Lords finds the dam masters upon Don had contraveined the A&ts of Parliament, in not observing the Saturdayes flop, and the 3 inches of the haiks ; and, therfor, ordained them to be regulat, but, for ther bygaine transgressions, fynd them in 10,000 mks. Ther wer 2 other points then found irregular in them, viz., ther fisching with stent nets ; item, ther fisching beneath the cruives from Saturdayes night to Monday morning, which, tho not prohibite by the A&t, yet was found to be ane eluding of the Saturdayes flop. And as for Tolquhon, (who was very accidentally drawn in unto this proces, on a citation of 24 hours as within Edinburgh,) he was ordained to regulate his dam, and to pay 1000 mks. of fyne, for keeping it up after a former decreet anent it, in absence, against him.

9 Aprilis 1684.—The King's Advocat continued the dyet against John Weir of Newton, accused of treason, for sending a man with horse and armes to Bothuel-Bridge, to the 2^d Tuesday of Jully nixt. No. 239,
p. 79.

2. As also against Sir John Cochrane of Ochiltry ; but, in the mean tyme, ordained him to be denounced for not finding of caution ; which seemed inconsistent and incompatible with the continuation of the dyet.

3. But he insisted against his 2^d sone, John Cochrane of Waterfide, and in respect he was to be forfaulted in absence, the King's Advocat exactly observed the formality of swearing the messenger herauld, who executed the summonds of treason against him, at the mercat-crosse of Edinburgh, and pier and shore of Leith, and the 2 witneses, that the same is really done, (which is not used when the pannell is present,) and in regard James Dumbar, the messenger executor, was lying sick on his death-bed, (wherof he dyed ere the nixt day,) 3 of the Lords Justiciaries (who make a *quorum* in vacance,) ware sent of the bench to his house, who took his oath ther ; and it being returned, the libell was read ; which was found relevant, (after some altercation amongst the Lords themselves,

because of the 11^t A&t of Parliament in 1669, allowing the Justices only to forfait in absence in case of treasonable rising in armes, and open rebellion,) in thir termes; that Waterfyde was with the rebels at ther rendezvous, in armes, at the Barhill of Cummock, and in his father's toune of Ochiltry, &c. For drilling men under cullors, without the King's warrand, they judged open rebellion; and, accordingly, they proved the same against him by fundry witnesses. It happened that severall of the Nobility fell to be upon his Affize, which neided not, he being only a Baron and not a Peer; but the Advocat apologized for it, and declared ther privilege should be observed, only to be cited upon Noblemen's Affises; (but of old with us the great Barons, which ware the nobility, and the small ones, did not differ *specie*;) and then he added a reflection against Cefnock's assysors, that the gentlemen whom they ware making use of for Assysors, ware turning capricious; but the King would alwayes trust his loyall Peers. The Affise inclosed did returne him guilty of treason; so he was forfeited in absence. He was but a boy of 16 years old at the tyme of Bothwell-Bridge rising. His right to Waterfyde was only a disposition from his grandfather Dundonald, under reversion of a rose-noble. *Queritur*, if he may redeime it now, no order having been used before the doome of forfaitor; and what reason can be for his losing his faculty of redeiming, except that he refetted him after the crime? Then his armes ware torne at the Crosse, and Middleton got the gift of his forfaitor.

No. 240, *Eodem tempore*.—The Synod of Edinburgh meits; whair Kennedy, p. 79. Provost of Stirling, and Mr. Monro, first Minister their, complain of Mr. Hunter, the 2^d Minister, that, on a communion day, he did so intoxicat himselfe with the sacramentall element of wine, that, when he preached, he misbehaved, and spoke nonsense. Mr. Hunter raised ane exculpation and recrimination, and this divided the 2 factions in that toune; the Bischop appointed witnesses to be examined theiron; but they afterwards are agreed.

2^{do}. The Synod makes ane A&t against private baptismes and marriages, that heirafter none be celebrat in houses, but all in the Church, except

in cafes of great neceffity. (See A& 1, Parliament 1621, ratifieing the 5 Articles of Perth.)

3^{tho}. That ther fhall be obferved, in all tyme coming, in his dioceffe, 2 anniverfary fafts, one upon the laft Wednefday of Februar, to intreat the Divine Majefty to fend a good feed tyme; and the other on the laft Wednefday of Jully, to beg God may fend a feafonable harveft. This was thought by fome more then the Bifhop and his Synod could doe, it belonging to his Majefty and the Parliament, at leift to the Privy Counfell and the fecular Magiftrats, to indi& fafts and feftivals, efpecially anniverfary ones; and fome of his prefbyters ftumbled to obferve them till the Counfell interpoſed ther authority, at leift connived; others ſaid, any maſter of a family might injoyne a private faſt in his oun houſe, providing it be not contrare to any law, nor interfere with the Magiftrats commands.

4^{tho}. They renewed that Article of Perth, ratified in the 1 A& of the Parliament in 1621, anent the confirmation of children; only by that A& the examination is at 8 years old, wheras the Bifhop ordains the account they fhall give of ther faith, by repeiting the Beleiff, Lord's Prayer, and Ten Commandments, and the ſhort Catechiſme then uſed, and the renewing ther baptifmall engadgements to be at 16, when they are come to the age of more underſtanding.

10 Aprilis 1684.—At Privy Counfell, Sir William Scot of Harden gets ^{No. 241,} ane A&, allowing him the liberty of his confinement to the wholle Caſtle ^{p. 80.} of Edinburgh, *ut in carcere liberiore*.

2^{do}. Rowallan, Comifar Monro, and the other priſoners, had alſo in bills, craving that, in regard reſtraint of them all in one rounge during the heat of ſummer might be very noxious, and prejudiciall to ther health, that therfor the Secret Counfell would ather be pleaſed to inlarge ther priſons, or put them in ſeverall priſons, up and doune the country, wher they may have more free air.

3^{tho}. Cornelius a Tilbourne, a German mountebanck, gives in a bill to the Privy Counfell, craving licence to ſet up a ſtage in Edinburgh; (tho the Seſſion tyme would have been more feaſonable to him.) The College

of Phyſitians oppoſed it; but it was granted. He had uſed a great experiment on himſelfe, in preſence of the King at London, in counter-aſting ſome poiſon, (by his ſovereign *Orvietan*, and other remedies,) which the Phyſitians ther had preſcribed him, for which the King gifted him a chain and medall, which he wore; and he underwent the ſame tryall at Edinburgh; but he ſaves himſelfe by drinking much oyll; for he excludes and excepts from the poiſon he is to take all mercury, aquafortis, and other corroſives. Yet his man, on whom he experimented ſome of his concluſions, dyed. *Queritur*, How far he is puniſheable for his ſlaughter?

No. 242,
p. 80.

Eodem die.—Mr. John Bairdy, the Non-conformiſt miniſter of Paiſley, being cited for breaking the injunctiōs given him with the Indulgence; the Privy Counſell deprives him from the exerciſe of his miniſtry in all tyme coming; and in regard his wife was, for the preſent ſick, they gave him to the 1 of May to find caution to live regularly, and forbear preaching privatly; otherwayes to undertake baniſhment, and he, and his family, to remove out of the kingdome. So that it appears they are wearing out the Indulged Miniſters all the wayes they can.

2^{do}. Mr. Ezeckieſl Montgomery, Shireff-depute of Renfrew, (*de quo ſupra, vidimus pag. 62.*) ther is a letter from the King, indemnifying him as to life and fortune, notwithstanding the depending proces againſt him, providing he ingenuouſly diſcover what he knows of the acceſſion of any heritors to the late rebellion, or anent ther reſetting ſuch; or of the unlawfull extortion uſed in the laſt Circuit Court in 1683. This is againſt Mr. Thomas Gordon, and Sir William Paterſon, the clerks. As alſo, he having promiſed to diſcover, they aſſoilzie him from the libell, and lets him out upon bond. And then he runs away to Ireland, and beguiles them.

3^{tio}. Mr. George Scot of Pitlochie, gets a warrand from the Privy Counſell to print a book of Collections made by his father Sir John Scot, of the charters of ſeverall lands and baronies which he had extracted out of the Chancellary, when he was director of it, with ther reddendo's, &c.

4^{to}. Sir James Fleming, late Proveſt of Edinburgh, upon a petition, gets 150 lb. ſterling modified to him for his pains and expences in per-

shuing and fyning the inhabitants absents from the Church, conforme to the reservation made in his favors, which was thought a large modification.

Eodem die.—The Lords of Session, as Commissioners of my Lord No. 243, Argile's forfaultor, meit; and ther a letter of ane old date, but newly p. 80. recorded, is produced for my Lord Lorne, wheirby the King, besides the 9000 lb. Scots contained in his contract of marriage, gives him 6000 lb. more, in all 15,000 lb. Scots, and the other children 900 lb. sterling a year among them. Against this ther ware many objections made by the creditors, viz., that *quoad* the 9000 lb. a year contained in his contract of marriage, they ware *præferable*, being *præferable* and prior creditors, and so he was *successor titulo lucrativo post contractum debitum*; and as to the 6000 lb. per annum added, 1^o before that letter they had a *jus quæsitum* by the signitor; 2^{do}. They had rights *præferable*. The Lords ware much straitened, but gave him a locality for that summe, but part of it was the Isle of Mule, at the racked and screwed rentall which his father had proven it to be; (and now *justo Dei judicio*, it's casten in his sone's lap;) but they assigned this locality *salvo jure cujuslibet*, and particularly of the Bischop of the Isles, who, by a decreit of certification in ane improbation, pretended right to severall lands in Cowell.

Eodem die.—Patrick Mitchell's service being (*supra* 8 *Februarij* 1684) No. 244, ordained to be led before the Maiffers and Saline adjoyned for ther assessor, p. 81. and this day being set, Weir of Kirkfield, donator to the defuncts bastardy, stopped it on a bill pretending that if he had got ane incident to cite witnesses on the bastardy, and to prove the inhability and poverty of Mitchell's witnesses, he would make it appear this party had no blood interest at all, and that the defunct frequently declared he was nothing to him; on this, throw the Treasurer's moyen they continued the service for 2 weeks, and granted the donator a diligence, but at last the service was got exped, on a probation of his propinquity.

11 *Aprilis* 1684.—The case of the 2 Provefts of Ayr, Cunyghame and No. 245, Birfbane, is advised at Privy Counsell; and they find Cunyghame had p. 81.

walked not so cautiously as he ought, in regard he gave the Rebels quartering billets in his toune of Air, when they surprised it; (tho he did it to keip it from plundering and burning;) and therfor fyned him in 500 mks., and in the witnessses expences, (which would be double that,) and to go to prision till he fand caution to pay it. And also fand Brisbane's election illegall; but, in regard of his loyall behavior, and that he was *in exercitio*, continued him till Michelmasse; but discharged him, or the new Counsell, to elect other Magistrats then, because the Privy Counsell would doe it. This was thought strange, to continue him in office, and yet to discharge him to elect his successors. But the designe is, to assume, by degrees, the elections of all the Burrows Royall of Scotland into the King and Counsell's hands.

No. 246, *Eodem die.*—The Privy Counsell having considered the Ministers of
p. 81. the Abbeyes petition, (*de quo supra pag. 76,*) with the Toune's answers, they remit them to the commission for plantations, their to seek ane augmentation. But, in the mean tyme, nominats the Marquis of Atholl, Earle of Perth, Bischop of Edinburgh, &c., to recommend it to the Magistrats of Edinburgh to see ther stipends made equall to ther Ministers within the toune, and to be uplifted in that same very way; which was judged ane od recommendation, for, 1^o They have ane competent stipend far beyond the allowance of the A& of Parliament in 1633. 2^{do} The Magistrats of Edinburgh are nather patrons of ther Kirk nor titulars of ther teyndes in ther landward parish, (which belong to the Bischop of Edinburgh,) and so are not concerned, and as long as ther are free teyndes in ther oune parish, they cannot trouble ther neihbours, as was found in the case of North Leith and the West-Kirk. 3^{tio} This pershuit is only proper before the Commission for plantation of Kirks; and if it ware to come of any, the Bischop of Edinburgh (who hath ther teinds) behooved to pay it. 4^{to} Ther annuity within Edinburgh did not pay the halfe of ther oune Minister's stipends, and the King's gift to them of ther impositions on win and ale, and 4 lb. of impost was not given them for ther Ministers, but for payment of ther other debts; and it's scarce reasonable in them to crave the Magistrats of Edinburgh may be

collectors of ther stipends, and, at this rate, all the adjacent ministers may crave ane augmentation of the Good Toune as weill as they.

Eodem die.—A resignation is made in Exhcequer, by Drummond, No. 247, Lord Matherty, (*alias Mater Dei*, a Nunnery so called,) lying sick, and p. 82. having only [a] daughter, of his honor and dignity of a temporall Lord, in favors of General Major Drummond, his brother, and air-maill, to save expences. And his Majesties assent will be procured; and, at worst, he would carry it by a service after his brothers death.

2^{do}. Item, Sir Alexander Gibson, Clerk, resignes the superiority of the lands of Mortonhall, holding of his barony of Pentland, (thir ware my Guidfires lands,) to the effect that, Trotter of Mortonhall, the present heritor, (who had given him a summe of money to renunce this superiority,) might hold them immediately of the King.

12 *Aprilis* 1684.—Captain Lewis Lauder sent in to the Privy Counsell No. 248, one Captain Paton, who was in both the Rebellions of Pentland-Hills and p. 82. Bothwell-Bridge, and is excepted out of both thesse indemnities; and lurked with Collonell Lermont in the country many [years] till now that he was apprehended. He carried himselfe very discreetly before the Justices; however, he is sentenced to be hanged on the 23^d of April; but was for a tyme reprieved, (see pag. 84.)

17 *Aprilis* 1684.—At Privy Counsell a petition is given in by the No. 249, Magistrats of Edinburgh, against Sir James Fleiming, (see it pag. p. 82. 80 *supra*,) complaining of the modification of 150 lb. sterling made their, because exorbitant. And 2^{do}. the Bailzies who sat and judged with him, ought to have a share of it; and they offered to quite ther parts of it to the townes use. The Counsell added 50 lb. sterling more, and named a Committee to adjust and divide it amongs the whole last year's Magistrats. But it's like Sir James Fleiming, then Provest, will get a double portion of it.

Eodem die.—Hew Wallace, serviteur to Sir William Wallace of Craigie, No. 250, p. 82.

persuades Hew Campbell, Cefnock's sone, and Mr. Hew Archibald, agent, for calumny and defamation of him, (see Cefnock's case, *supra* page 72,) in alledging he had tampered to corrupt and seduce the witnesses against Cefnock. The defence, by way of reconvention, was, 1^o That the condescending on him in the Criminall Court as the praetiser of the witnesses was necessar, being forced theirt o by the Justice Generall, who repelled the objection of subornation otherwayes proponed in generall. 2^{do} They had probable ground to think he had been over active, for some of Cefnock's witnesses, in his exculpation, deponed he had drunk with them, and given one of them a litle money, and pumped what they could say against Cefnock; and *quævis probabilis causa excusat a calumnia, per leges a doctoribus vulgo citatas*. The Lords fand both the libell and reconvention relevant; and admitted both to probation.

No. 251, *Eodem die*.—The Privy Counsell indi&ts a generall fast, to be keiped
p. 82. on the 7^t of May, and in remoter Dioces&es on the 25 of May, because of God's threatning the land with an unusuall cold spring.

2^{do} They, by a printed proclamation, recommend the poor inhabitants of the toune of Kelfo, (whosse houses and stocks ware almost all brunt, on the 8^t of Aprill last, by ane accidental fire,) to the charity of the wholle kingdome for a voluntar contribution.

No. 252, 18 *Aprilis* 1684.—At Exchequer, the Lords advised the case betuen the
p. 82. taxmen of the brandee, and the sugar manufactory at Glasgou, and fand, that the people ware imposed on by the venting of that rum made of the mollasses of sugar as upright French brandie, and therfor, under the paine of confiscation, ordained the masters of that manufactory to print the words, "This is Rum," on the hogheads, that the people might not give the price of true brandee for it. But this will not cure the disease, for thesse who retail it in smalls may sell it still as Nantes brandee.

No. 253, 22 *Aprilis* 1684.—The Privy Counsell makes ane act, settling the dayes
p. 82. for the rendezouz of the Militia of horse and foot, throw all the Shires, for this year 1684.

2^{do}. They, by ane A&t, ordaine persons of the best reputation and loyalty in every parish, to be forced by horning, (if they will not accept voluntarily,) to be Elders, to assist ther respective Ministers, in ther Sessions, for ecclesiastick discipline. This arose upon a complaint made to the Bischop of Edinburgh by fundry of his Ministers, that the gentry refused to concurre with them, so that they ather could get no Session constitute at all, or else it was only of the tenandry. Yet some of them may find it uneasy if the gentry ware ther Elders; for they would not alwayes suffer them to rule and governe all, as now they doe. However, this was looked on as ane A&t not very consistent with Episcopacie, but rather peaking and declining to Presbyteriall Governement, whose invention the Kirk-Sessions and Presbyteries ware. See the 16 A&t of the Parliamant 1661, and the marginall note ther anent a precarious tolerance given to Kirk-Sessions.

Eodem die.—John Chancellor, bailzie of Edinburgh, is pershued at No. 254, Privy Council, by the tacksmen of the King's customes, for importing p. 83. English cloath, contrare to the 12^t A&t Parliament 1681. He had put it up in the forme of new cabinets, and thought to have got it past so; but David Burnet, one of the surveyors at Leith, suspected it, because of the weight of the cabinets; and so he was discovered. It was repute a greater aggravation of his transgression, that he was one of them that had ingadged in the Scots cloath manufactory, and had given bond not to import. He was fyned in the value of the cloath, (which was æstimat to 400 lb. sterling,) and the cloath (in the termes of the A&t) ordained to be brunt by the hand of the executioner; and his part in the Scots manufactory declared forfaulted, and he deprived theirow. He made severall excuses, as that he was only to have carried it over to Ireland; but they ware all found to have been but made stories. He caused try at London, to see if he could obtain ane abatement of his fyne. But he was delt the more rigorously with, that he had married Forbes of Water-ton's daughter, the Chancellor's niece.

24 Aprilis 1684.—A proclamation of Counsell was past, and printed, No. 255, p. 83.

extending the A&t of apparell, to prohibite the wearing of night-gouns and mantois in the streets, (if they be of prohibited stuffs;) as also against mourning coats, and the covering coffins with black cloath and freinges. Many other things ware spoke of as sumptuous and prodigall, viz., weemen's laced shoes; mo tyres of freinges on ther petticoats than one; mushed-out filks, and flored [flowered] hoods and scarfs; which are used, tho contrare to the 1st acts. But thir things ware forborne to be exprefly discharged at this tyme.

No. 256,
p. 83.

During this wholle moneth of Aprill, the Hy-Treasurer, and Treasurer-depute, had frequent meetings on the Toune of Edinburgh's count and reckoning. They went no farder back than 1674, and, having made a full rentall and charge of the Toune of Edinburgh's wholle common good and revenew, they caused Proveft Curry, (tho they aimed little against him,) and all the subsequent Provefts, subscribe the same. They studied to lay the malversations and misemployments of the Toune's rents deip upon the 3 Provefts, Kinloch, Dick, and Fleiming, and on Sir James Rocheid, the clerk. Thesse 3 Provefts went to London to see what redresse they could get; all ther hopes depending on Chancelor Aberdean's standing. Ther past many interlocutors against them, as that Sir James Dick and Magnus Prince, whille they ware magistrats, malversed in ferming any part of the Toune's common good, as tacksmen to the society; tho they alledged that it was not yearly roused.

2^{do}. They refused to allow the article of 6000 lb. sterling, payed to the Duke and Dutchesse of Lauderdale, for the continuation of the imposition gift, unlesse they proved, 1^o. The payment, (now they had no discharge of it, but Glendoick and others could attest it.) 2^{do}. That it was given with the King's knowledge and approbation; this was to discouradge bribery. Yet it was looked upon as hard, for it was *in rem versum* to the Toune, and if ye will not allow it to the Magistrats payers, then they ought to have the benefit of the gift, which is much more advantageous to the Toune than the 6000 lb. sterling comes to. They say, the King declared he knew of my Lord Lauderdale's getting that gratuity.

3^{tio}. They charged Sir James Rocheid, clerk, with many vitiations he

had made in the Toune Counsell books, and foisting in of A&ts, in blancks, without any warrand, wheirby money is given to himfelfe and freinds. Item, with additions on the margins. Item, with keiping pages blank to fill up A&ts in. Item, with bribrie deponed againft him in 1673, by one Stirling, deacon of the bonnetmakers, ftanding recorded in the very Counsell Books. (See of this count and reckoning the MS. E, at the 30 of March 1683, page 319.)

5 *Maij* 1684.—The Counsell emitted ther proclamation, eftablifhing No. 257, Lieutenants in the Shires of Argile and Tarbet, for fecuring the peace of^{p. 84.} the Hylands; ordaining every landlord to contribute men, with 30 dayes provifion; fome 300, others 200, and fome 100. The narrative is made to be, the late Earle of Argile's being in the late Englifh phanatique confpiracy did undertake to raife the Hylands of Scotland for them, to prevent which, &c.

2^{do}. They ordaine the lift or roll of the fugitives' names to be printed, of all fuch as ftand denounced, being divided by the Parifhes or Shires. And withall prorogats to the 1 of Auguft nixt, the tyme of bringing in ther testificats that they had tane the Teft.

6 *Maij* 1684.—The Hy Treafurer, and theffe of his party, began ther journey from Edinburgh to London, being fent for by his Majefty.

7 *Maij*.—The Faft was keiped, *de quo pag.* 82.

8 *Maij*.—The Chancelor, and fome with him, parted for London poft.

9 *Maij* 1684.—Captain Paton, (*de quo supra pag.* 82,) is execute by No. 258, hanging at the Graffe-mercat. He was willing to have taken the Teft,^{p. 84.} but a quorum of the Privy Counsell could not be then had to repreive him.

2^{do}. The woman in Leith is alfo hanged, who attempted to burne hir neighbour's houfe, and poisoned a woman in the Cannogate, whom fhe was jealous hir husband was too familiar with; fhee employed another woman to carrie it, who, fufpecting the thing, earthed it under the Gallowlie, and the dogs fmelling it and digging it out, eated of it and dyed. Then fhee imployed another woman to carry it, baked in a cake

or short bread, who delivered it ; and shee was hanged for it, on the 9th of Jully *infra*.

During the absence of the great men at Court ther ware but few Privy Counfells held, and litle of bufineffe done ; only some of the prisoners, for being at Bothuel-Bridge rebellion, are condemned to be carried away to Carolina.

No. 259,
p. 84.

Junij 1684.—The Earle of Aberdean, Chancelor, being removed from his place by his Majestie's pleasure, and the Earle of Perth made Chancelor in his rouse ; it was rumored that a feild conventicle was keiped in Mid-Louthian, wheirof my Lord Aberdean was Shireff. The Committee of the Privy Counsell did once ishue furth ane order, appointeing him to be cited over to answer for his negligence in not suppressing it, at leift in not giving tymeous advertishment of it, conforme to the Act he had caused the Privy Counsell make, in May 1682. But they, taking a præcognition of the matter, they found it was held in the bounds of Tuedale shire, on the very marches betuixt it and Mid-Louthian ; wheir-on (tho ther pique and humor ran very hy) they sifted proces against him, (Aberdean ;) and ordained the Earle of Tuedale, as Shireff ther, to be cited : but it was suffered to sleip.

No. 260,
p. 84.

Eodem tempore.—Nicolson of Carnock is served air of line to the Lord Naper, in right of his mother, who was the last Lord Naper's sister ; and is to take the name and armes of Napier.

No. 261,
p. 84.

Eodem tempore.—The Royall Burrows keip't ane convention at Edinburgh, wher the King's Advocat, and Kennedy the Conservator, sate ; which never was used before. They voted ane addresse to be made to his Majesty, to restore back the Summer Seffion. As also, that application might be made to the French Embassador, to use his endeavors with his Master to get the 50 souse upon the tun of Scots and French goods, exported or imported, releas'd and taken of ; to which effect they imployed Mr. William Aikman advocat with instructions to Paris, to Sir Richard

Grahame, Lord Preston, our King's Imbassador their, to intercede for the same.

8 *Julij* 1684.—The lands of Eift-barns, in Eift-Lothian, by a warrant and commiffion from the Lords of Seffion, ware roused before my Lord Harcous : and Mr. Edward Wright, advocat, for the use of David Ofwald got them at 2550 mks. the chalder, being scrud that hy by Hary Sinclar's bidding till 2500 mks.; wheras the few-ferme of such croune lands, by the tent A&t of Parliament, in 1633, are redeemeable for 1000 mks. each chalder; but thir lands, by a speciall A&t of Parliament, in 1621, are only redeemeable for 2000 mks. each chalder; so what was few-ferme, and what was property, deserved a different valuation and price. No. 262,
p. 84.

Eodem tempore.—The Magistrats and Toune Counsell of Edinburgh make ane A&t, discharging all the keipers of crames, and fruit stands, to remove of the street; because there ware many shops standing empty, which they might take. As also, forbidding any tinkers to goe throw the toune, but only one to serve the wholle toune, with his servants; and not to stir out of his chop, but whoever had to doe with him ware to bring ther work to him. No. 263,
p. 85.

10 *Julij* 1684.—The Earle of Perth, Chancelor, the Marquis of Queansbery, Hy-Treasurer, and the rest of our grandees, arrived at Edinburgh from Court, having carried all ther designes against the Earle of Aberdean. And, on the 15 of Jully, the Privy Counsell met; when a new commiffion of Privy Counsell was produced, wher 7 ware pretermitted, and 4 added, beside the Chancelor of England, &c. (See all ther names in my Historick Manuscript, at Jully 1684.) Item, Perth is receaved Chancelor, in place of the Earle of Aberdean: he had a short discourse, shewing he was very sensible of his inability to discharge so weighty a place as the King had bestowed on him, but hoped ther Lordships of the Counsell would assist him, and pardon his mistakes when he fell in them at any tyme; they flowing from a good designe to serve his Majesty. No. 264,
p. 85.

The Earle of Lithgow is made Justice-Generall, in place of Perth; and he was admitted the next day in the Criminall Court; on which the King's Advocat had this reflection, that the King every 2 year gave him the trouble of a new Justice-Generall to breid in the Criminall Court; it having been the most ambulatory and moveable of all thesse places. Then his (Lithgow's) office of Collonell to the regiment of the King's foot guards, was by the King's commiffion, given to Collonell James Douglas, the Hy-Treasurer's brother, (who was once ane Advocat.) Item, Drumlanrick is made a Privy Counsellor, Captain of a troupe to be levied, and Lieutenant Collonell to Claveris. And Nafmith of Poffa is Quarter-master to a regiment, and made the King's Falconer. And Cunyghame of Entirken gets the keiping of the Great Seall again. (See morall and politicall remarks on all thir changes in my folio Historique Manuscript, in Jully 1684, and therfor I have made them shorter heir.)

Eodem die.—George Drummond, Proveft of Edinburgh, is knighted.

No. 265, 16 *Julij* 1684.—Perth, Chancelor, is admitted Shireff-principall of Mid-
p. 85. Lothian, in place of my Lord Aberdeen; and his deputes are Mr. Charles Gray and David Drummond, advocats, on the laying aside of the 2 former, viz., Mr. William Fletcher and Thomas Skeen.

No. 266, 17 *Julij* 1684.—At Privy Counsell, ther was notice taken of a scuffle
p. 85. fell out the night before, betuen Sir Adam Blair younger of Carberry, and one Gordon ensigne to Captain Grahame's company of the Toune of Edinburgh's guards; but finding Sir Adam had been drunk, and in the wrong by studieing to affront the Ensigne, they could not get ane occasion by this to turne out the said Gordon, who came in by the late Chancelor's moyen.

2^{do}. The Marquis of Douglas having got a letter from the King, by Queansberrie's power, recommending to the Judges the care of that ancient family, and giving his son, the Lord Angus, a pension of 200 lb. sterling a year to breid him with. He pursues his stepmother, the Lady Sutherland, before the Privy Counsell, for ane aliment [out] of hir joynture of 12,000 mks. per annum, seing, deducing the annuelrents of his debts,

he had not behind to sustain his dignity. Shee spoke for hirselfe a long tyme; and alledged, it was hard, when appearand airs mismanadged ther estates, and suffered chaimberlains (this was against Blaikwood) and others to impose upon them, that onerous provisions in contracts matrimoniall should be burdened with them; and that he had ratified hir joynture expressly in 1669, after his majority. The affair was referred to a committee.

3th. One John Wilson pershues the Shireff-deputes of the Merse for wrongous imprisonment of him. Alledged, it was upon information given that he was a theiff, had stollen some victuall, and used false keyes.

4th. Item, Mr. George Scot of Pitlochrie, had a complaint against one Bosuell, about the redelivery of a backband.

5th. Item, a fellow that had been a miller in the Hy-Treasurer's ground, being halfe distracted, came to the Crosse of Edinburgh on horseback, dropt tuo letters, one to the King and another to the Marquis of Queensberry, telling that he was oppressed, and thrust out of his rume; and the King was abused with Popish Counsellors, &c. He was apprehended and imprisoned.

19 *Julij* 1684.—The Town Counsell of Edinburgh ware thinking on No. 267, ane Act, ordaining ane coach and horses to be bought, and maintained p. 86. on the publick charges, for the use of the Provost and other magistrats, in regard they ware at expence oft tymes, in hyring hackeny coaches. The other faction laught at this motion as ane unnecessar charge to the Toune, and, being calculat, would be 6 tymes more then the coach hyres they ware at amounted to; which reflection made some demurre on the Act.

Eodem tempore.—The decreet of divorce is pronounced by the Comi- No. 268, sars of Edinburgh, at the Earle of Monteith's instance, against his Lady, p. 86. upon a probation of hir adultery by the testimony of weemen and others; and sustained hir defence upon his retaliation, by his being likeways guilty of the same cryme; but refused hir a commissioun to examine witnesses, who ather would not or could not appear; of which shee complained: as also, shee raised a reduction of the said sentence of divorce,

on this ground, that they had committed iniquity in sustaining the libell generally thus, that shee had lyen with Roffe of Auchlossan, and Mr. Feilding, and "diverse others;" and that the witnessses having deponed as to nather of the first 2, the libell was not relevant as to "diverse others;" unlesse it had condescended on; likewayes, the witnessses ware *malæ famæ*.

2. However, on the 4^t of August 1684, the Earle having raised a criminal libell against hir, at the Justice Court, and shee not being able to find caution, was forced to retire out of the way, and so was denounced fugitive. And he having componed with the Marquisse of Montrosse's tutors, and made himselfe a naked liferentiar, and also agreed with Roffe of Auchlossan not to pershue him for bigamy, and given him and Mr. Æneas Macpherson 5000 mks.; he causes the King's Advocat, in his oun name and the Ladie's name, raise a libell against him as guilty of adultery, and bigamy in marrieng Catharen Bruce, Blairhall's sifter, before he had obtained his divorce: Which is meerly done of collusion and designe, to get ane absolvitor, by a white assyse, for lack of probation; and therfor the Ladie's lawyers appeared and disclamed the pershuit, (tho shee had once been consulting with the King's Advocat, in order to the raising a libell against hir Lord,) and craved the dyet might be deserted, but prejudice to raise new letters against him for the bigamy when they saw fitt.

No. 269, 22 Julij 1684.—At Privy Counsell, ther are 2 A&ts made; one for discovering and apprehending some 200 rebels, [who] ware in June last seen in armes in the Westren shires, and against ther resettters, ordaining them to deliver them up, or to raise the huy and cry after them; with certification, if they faill, betuixt and the 15 of August, the King will take another course: Which, I think, was the Counsell Justiciary-circuits which followed. The 2^d proclamation ordained all the Militia benorth the river of Forth; (it seems they trust them best,) to be in readinesse on 6 dayes warning with 15 dayes provision, [to march] whersoever the King or his Counsell shall direct them.

3^{tio}. By order of the Secret Committee, Meinzie of Weyme, Campbell of Glenlyon, and Collonell Meinzie, are seized on, and brought in prisoners to Edinburgh, on a jealousy that they keiped secret correspon-

dence with Argile; and, upon finding sufficient bayll to appear when called for, they ware liberat after examination.

4^{to}. Patrick Telfer, merchand in Edinburgh, pershues [one] Geddy for a ryot in ejecting him furth of the possession of some land ther.

5^{to}. One Turner, a cabinet maker in the Cannogate, pershues one Kille, a wright ther, not only for debarring him from the free exercise of his trade of cabinets, (which our wrights could not doe,) but also for beating him. They denyed the beating, and alledged, he was ane unfree man, and his trade not yet declared a manufactory. The Wrights of Edinburgh gave him ane essay of a cabinet and standishes, which he undertook to make as good as any came from abroad; this was the tryall ere they would admit him a freeman among them.

Eodem die.—Mr. Alexander Haigins, Advocat, is created and admitted No. 270, by the Lords of Session, to be collector of ther rents and salaries, in place ^{p. 87.} of Robert Hamilton of Presmennan, and James his sone, who demitted.

Eodem tempore.—There is a warrand from the secret Committee of No. 271, Privy Counsell, to imprison the Laird of Macfarlan in Dumbarton Castle; ^{p. 87.} because ther was 30 stand of armes fand in his house, and it was suspected they ware for Argyle's use in his designed invasion: But he having instructed that he got them only to keip, when the King's forces against MacLean ware disbanded, and that he had refused to give them back to Argile; whairon he was fet at liberty.

2^{do}. The Lord Neill Campbell, Argile's brother, is confined within the Toune of Edinburgh; and found the Earle of Louthian, Ker, his brother-in-law, and Scot of Thirlestane, cautioners for his appearance when called for, upon 6 hours warning, which is appointed to be given at Thirlestane's lodgings in the Cannogate; and if he obtain any warrand from the Chancelor to goe abroad, it most not exceed 6 miles from Edinburgh.

26 *Julij, et diebus seqq.* 1684.—Mr. William Spence, late servant to No. 272, the Earle of Argile, by order of the Privy Counsell, is tortured and put in ^{p. 87.} the boots, to force him to reveall what he knows of the Earle's, and other

persons, accession to the late English phanatique plot, and the association and designe of rising; and in regard he refused to depone upon oath, if he had the key, wherby he could read some letters of the Earle's, produced by Major Holmes, written in ciphers; and seing he would not say upon oath that he could not read them, and that they offered to secure him by a pardon for his life, it rendred him very obnoxious, and suspect of prevarication; so that, after the torture, he was put in Generall Dalzeill's hands; and it was reported that by a hair-shirt and pricking, (as the witches are used,) he was 5 nights kept from sleip, till he was turned halfe distracted; but he eated very litle, of purpose, that he might require the lesse sleip. Yet all this while he discovered nothing; and tho he had done it, yet litle credit was to be given to what he should say at such tyme. *Vide supra* 20 Novembris 1683, Earleston's case.

No. 273, *Eodem tempore*.—Inquisition is made after the Earle of Dundonald, p. 87. for keiping a Chaplain with his sone the Lord, when he was dying, who prayed God to blisse the rebels in the West with successe; and on this, Dr. Birsebane, and 3 other West-country Physitians ware examined, having heard this when they ware attending my Lord Cochrane in his sicknesse, before his death in 1679.

No. 274, *Eodem tempore*.—By a gift from the King, Mr. George Bannerman p. 87. and Mr. Robert Colt Advocats are admitted conjunct Sollicitors for his Majesty, in place of Sir William Purves, and his sone, whosse place the King recalled.

2^{do}. Mr. Colin MacKeinzie Advocat is, upon a letter from the King, admitted and receaved conjunct Clerk of the Privie Counsell, with Sir William Paterfon, (who payed a summe of money to keip himselfe in, as Mr. Thomas Gordon had also done to the Dutchesse of Portsmouth, to secure himselfe in the place of Criminall Clerk,) and that in the room of Patrick Meinzie, deceast; and he turned out Hew Stevinson from being Under-clerk, and made use of the service of George Rae in his stead.

No. 275, *Eodem tempore*.—Some of the King's forces, bringing in 16 prisoners p. 87.

they had taken in the West, a number of theſe rebels, (ſome called them Engliſh borderers,) did way lay them, and aſſaulted them at a narrow paſſe at Entirkin-hill, wher their is a very ſtrait road, and a deip precipice on both ſydes, and reſcued ſome of the priſoners. Others of them were ſlain in the conflict; 2 of them broke ther neck over the precipice, and other 2 of them ware brought forward in to Edinburgh, and about one or 2 of the King's forces ware killed.

30 *Jullij* 1684.—(*Supra pag.* 79,) The Synod of Edinburgh appointed ^{No. 276,}
a faſt to be keiped, to pray for good harveſt weather. Some Miniſters ^{p. 88.}
ſcrupled, alledging it could not be keiped without the civill ſanction of the Privy Counſell's authority had been interpoſed theirto. However, ſome obſerved it this day.

5 *Auguſti* 1684.—Is obſerved for Gourie's conſpiracy. And the Privy ^{No. 277,}
Counſell ſits, and, on his Majeſtie's commiſſion, admits the Marquis of ^{p. 88.}
Athol to be Lord Lieutenant of Argile, Tarbet, and theſe adjacent Hylands, with a Juſticiary power. This was to pleaſe him, ſeing he had loſt the Chancellor's place, and to ingadge him to ther party, and to perſyt Argile's ruine; for the parcelling out his lands and juſtifications in the hands of ſo many great perſons, is the hy way to lay a perpetuall bar on the hopes of a reſtitution to Argile, for all the ſharers will obſtruct it; and this politique being followed, when the Earle of Goury was forfaulted, they could never reduce the forfaultor.

2^{do}. 15 priſoners, for being in Bothuel-Bridge rebellion, are delivered up to Robert Malloch, merchand, to be tranſported away in his ſhip to Carolina; where he will get 10 lb. ſterling for each of them. And to which place they ſay my Lord Cardroſſe is gone, not being able, for debt and cautionries for my Lord Kincairne, and his bigotrie in the Preſbyterian perſuaſion, to keip his oun country.

6 *Auguſti* 1684.—Mr. James Walwood, Doctor of Medicine, is, by ^{No. 278,}
order, apprehended on ſuſpition that he keiped correſpondence, and gave ^{p. 88.}
intelligence to the fugitives in Holland. He was delated by the Earle of

Balcarhouse on some private pick betuen them. And, within 2 dayes after, Hary Stuart merchand was arreifted on the fame fufpition; but he was fhortly after liberat.

Item, Mr. James Cockburne, Miniſter at Pentcaitland, dimits his Kirk in the hands of the Biſhop of Edinburgh, his ordinar, to ſhun any farther procedure in a viſitation made of his Church, upon ſcandalls that had broken out againſt him.

No. 279,
p. 88.

7 *Auguſti* 1684.—At Privy Counſell, Spence (mentioned 26th July) is again tortured, and his thumbs cruſhed with pilliwincks or thumbikins: It's a new invention, uſed among the coilziars when tranſgreſſors; and diſcovered by Generalls Dalzeell and Drummond, they having ſeen them uſed in Muſco[vy.] After this, when they ware about to have cawed him of new again in the boots, he being frightened, deſired tyme, and he would declare what he knew. Wheiron they gave him ſome tyme, and ſequeſtrate him in the Caſtle of Edinburgh, as a place wher he would be freeſt from any bad advice or impreſſion, to be obſtinat in not reveiling.

2^{do}. Jean Forret, a great agent for the diſcontented phanaticks, is this day imprifoned.

No. 280,
p. 88.

8 *Auguſti* 1684.—At Exchequer, his Majeſtie's Cuſtomes and Excife ware roused; and they ware fermed and ſet to Sir John Young of Leny, and his partners, viz., Robert and Alexander Milnes, and Dean of Guild Charles Murray, (who had them formerly,) James Ofuald, Sir John Foulls, Boyll of Kelburne, Greirſon of Lag, the Hy-Treaſurer's brother-in-law, &c., for 28,200 lb. ſterling yeirly, for 5 yeirs, and the King and his Treaſurer to be free at 3 years, if they pleaſe. And it was intimate to them, they behooved to expect no abatement. George Galbraith and Thomas Hamilton, merchants in Edinburgh, did alſo bid for them; but the Treaſurer would have the others getting it. They are raiſed 2200 lb. ſterling hyer then they ware ſet to the laſt cuſtomers; and it begins on the 1 of November 1684. In the roup they began at the ſumme they ware ſet for laſt, and roſe up alwayes by 100 lb. ſterling at leiſt.

2^{do}. The Chancellor, King's Advocat, &c., went to a meiting of Heriot's

Hospitall, with the Magistrats of Edinburgh, as Supervisors appointed by the Founder, in case of any doubt arising from the interpretation of the statuts. Yet they began to consider, whither the east corner of the fabrick might not be set forth for rent to indwellers, whose maills might be applied to the use of the poor of the Hospitall; and yet this seems to be no interpretation of any statute, but an inversion of the Founder's designe, which was only to have a receptacle for poor boyes, and not for other inhabitants.

3^{tho}. Gordon of Earleston is sent by the Privy Counsell to the Basse, to be kept prisoner there.

10 *Augusti* 1684.—At St. Androis, neir the antient Church of St. No. 281, Reulle, was Mr. Cairnecrosse, minister at Dumfriesse, consecrated Bishop^{p. 88.} of Brichen; and Mr. Douglas, the former Bishop of it, is translated to Dumblain; and Mr. Ramsay, then Bishop of Dumblain, is, with all the formalities of a translation, installed Bishop of Ross, in place of Mr. Alexander Young, the last Bishop of it, who dyed at Paris a year before, of the stone. Burnet, Arch-Bishop of St. Androis, assisting at this solemnity, that same night took sicknes, and dyed on the 22 of August thereafter.

12 *Augusti* 1684.—Sundry prisoners are brought in from Kilpatrick in No. 282, Galloway, being taken at a Conventicle, and refusing to tell wher the^{p. 89.} rebels are harbored; pretending, 1^o They are bound up by oath not to discover. 2^{do}. That they will be harrassed, oppressed, and murdered if they doe; and the King's forces are not alwayes at hand to protect them. One Mr. James Rainie [Renwick,] a phanatique preacher, come lately from Holland, is now the ring-leader of thir foolish peeple.

Eodem die.—At Privy Counsell, a bill is given in by the Magistrats of No. 283, the Toune of Edinburgh, against Sir James Rocheid ther Clerk, for^{p. 89.} keeping up ther French papers about Scotsmen's exemption from the 50 souse upon the tun of goods ther. At last, after search, they ware found *inter archiva publica* lying with the other Registers in the low Parliament hall.

No. 284,
p. 89. *Eodem die, post meridiem.*—In the Links of Leith, James Douglas, brother to the Hy Treasurer, was receaved Collonell, in place of the Earle of Linlithgow, (*Vide supra* 15 Jully this year,) on the head of his regiment; and the Felt Marshall carried chains, axes, bolts, and all the other ingins by which delinquent fouldiers use to be punished.

No. 285,
p. 89. 13 *Augusti* 1684.—Ther is a great meeting of the proprietars of the New-Eift-Jerfey plantation, wher the Earle of Perth, Chancelor, is a main undertaker, (the Toun being called New-Perthstoun;) ther are fundry Quakers also ingadged; and particularly Robert Barclay of Ury, who hes got from the King a Palatin's power ther. The Lord Neill Campbell, finding no peace, but being jealoufed heir, is mortgaging his oune fortune, and buying 80,000 aikers ther. Montgomrie of Skelmurly, for his principles, is also thinking to transport himfelfe thither; Mr. George Scot of Pitlochrie, &c.

2^{do}. Item, Hamilton of Orbifton, is made, by the Privy Counfell, Shireff of Dumbarton; the Earle of Wigton had it; and on his death, the Marquis of Montrofe got it, and exercifed it till his deceaffe.

No. 286,
p. 89. 14 *Augusti* 1684.—At Privy Counfell, David Scot of Hedderwick, neir Montrofe, perfhues Francis Ogilby of Newgrange, for taking away his only daughter from him, and marrieng hir againft his consent. Shee compeared at the Counfell bar, and declared shee had freely affented to the marriage, being 16 years old, and adhæred to him; and that he was a Conformift Minifter who married them, and fo fell not under the 34 A& in 1661, and 2 A& in 1672, againft clandestine marriages; which feime only to ftri&t [ftrike] againft fuch marriages as are confummate by phanatique minifters not lawfully authorized. Yet the Lords admitted the abduction to probation. Some thought it ware reafoneable to revive that part of the judiciall Mofaik law, that parents fhould have power to irritate ther daughter's marriages if they difposed of themfelves before they ware 21 years old. Others propofe, that no children having parents be married, unleffe ather the parents appear with them, or elfe the children find caution of 1000 lb. fterling, that ther parents are fatisfyed. The chek

with us is, we neid give them no tocher nor allowance if they fo run away.

Eodem tempore.—Ther is a Committee of Trade named by the Privy Counsell, for regulation of linnen cloath, &c. No. 287,
p. 89.

2^{do}. A propofall made by Lundy, Treafurer-depute, againft the Deaconries of Flefchers and Baxters of Edinburgh, as making combinations for holding up the prices of vivers, to the abufe of the peeple; and fo ought to have no fhare in the governement of the Brugh. But this is againft the Set and Decreit arbitral of King James the 6^t, making them 2 of the 14 Incorporations; but they ought to be kept off the ordinar Counfell, as oft they are.

Eodem tempore.—The 3 Lords Pitmedden, Reidfurd, and Edmifton, commiffioned by the reft (*supra pag.* [53]) to take the probation in the recognition, Sir John Hay of Muiry againft Poury Fothringhame, &c., went to the ground of the lands; and wheras each party had above 50 witneffes, to prove what was the true rentall, the Lords reftricted them to 20 the peice; and afterwards, on a commoning, perfuaded Sir John Hay to give Poury 13,000 m^ks., and him to accept it; and fo they agreed this tedious and expenfive plea. No. 288,
p. 90.

Eodem 14 Augufti 1684.—The Toune Counfell of Edinburgh, (in regard many complaints came of ther officers connivence with debtors, by briberie, in executing ther decreits, and A^cts of wairding,) declared, by a printed A^ct, they would fequestrate the firft Wednesday of each moneth to hear all fuch complaints, and to punifh them, by depriving the officer, and repairing the party. No. 289,
p. 90.

15 *Augufti 1684.*—3 of theffe who ware at the exploit of Entirken-hill (*de quo supra 26 Jullij*) are fentenced to be hanged that fame afternoon; for the Privy Counfell refolved, that any who are condemned for Bothuell-Bridge rebellion, or difouning the King's authority, or any other treason, fhall be allowed but 3 howers, and fhall be execute that No. 290,
p. 90.

same day the sentence is pronounced. The French hes some such custome. The hangman stripping them of ther cloaths, one called Nicoll, once a chapman, (who was at the foot of the ledder, looking on,) cryed out to the hangman, calling him dog, and villain, and threatning to doe him a mischeiff. Wheron, he being apprehended by the guards, and examined by the Privy Counsell, he was found to be of the same phanatique principles; and he boldly disclaimed the King, and ouned the Covenant; and so, most unnecessarily, he procured himselfe to be condemned, and was hanged on the 27 of August after. And one called Young was hanged with him, for ouning Bothuel-Bridge, Lanrick Declaration, the Excommunication of the King, and all ther other extravagancies; and they objected against any of ther Affizers that had tane the Test. The King's Advocat represented, that the anabaptisticall boors of Germany, just such cattell as thir, in a levelling fury rose up both against the nobility and gentry to murder them; and that Luther, and the other Protestant Divines being consulted, they ware clear that they ware to be hunted and killed as wolves and other ravenous beasts of prey, *teste Sleidano*.

No. 291, *Eodem tempore*.—Monro, hangman of Edinburgh, and Mackeinzie his stafman, beats a poor beggar so, that he was in hazard of his life, wheron they ware deprived, and thrust into the theiff's hole; (ther predecessor, Cockburne, on the 16 of Januar 1682, was hang'd for killing a beggar.) And one called Ormiston is created hangman.

22 August.—The Archbischop of St. Androis dyes.

No. 292, 22 Augusti 1684.—The Tolbuith of the Cannogate is broke; and 8 or 10 prifoners, on suspition of ther acceffion to rebellion, escapes. The Toune of Edinburgh was threatned for it by the Privy Counsell; and he who stood sentinell was, in a Counsell of War, sentenced to be shot, tho ther escape was out at a window, and by passing throw the riggings of many houses; and so might be without his knowledge.

No. 293, *Eodem tempore*.—Mr. William Spence, to avoid any farder torture,

(*vide supra* pag. 87 & 88,) reads theſe hieroglyphick letters; and agrees with Mr. Holmes[']s declaration, that Argile, Loudon Campbell, late Prefident Stairs, Sir John Cochrane, and others, had formed a deſigne to raiſe ane army in Scotland, and to land at ſuch convenient places as they hoped the peepſe would joyne with them, and hoped, if they once gave the King's forces a foyll, they would get many to flock in to them; and had advanced money to this purpoſe; and that ther ware 3 keyes, wheirof he had one, and Mr. Carſtairs another, (which cauſed him to be tortured,) and Holmes a 3^d; and they expected help from England; and alſo he approved of Gray of Creichies reading them. On this, Campbell of Ardkinlas was apprehended, by John MacNaughtan, in Innerairay; and Spence got the liberty of the Caſtle, and his remiſſion was recommended to be paſt by the King; and Gordon of Earleſton was ſent for from the Baſſe, not to be execute, (as ſome ſaid,) but to be tortured, and confronted with Spence. They reſolved not to admit of his madneſſe for ane excuſe, which they eſteimed ſimulate; as the late Chancellor had done.

25 *Auguſti* 1684.—By A& of Privy Counſell, our Parliament is adjourned from the 9 of September, on which it ſhould have met, to the tent of March 1685.

28 *Auguſti* 1684. — Spence's declaration forſaid is read, at Privy No. 294, Counſell. 2^{do}. Item, a letter from the King, dividing his Privy Counſell P. 91. into Lieutenantcies, to goe into the Weſtren and Southren provinces or Shires, (three of them to be a committee for a Shire, and if it ware ſmall, 2 Shires to be conjoyned,) to take tryall of all ſuch as ware in the late Rebellion, or diſobey the Eccleſiaſtick laws againſt Conventicles, &c., and with a Juſticiary-circuit power to inflict capitall puniſhment, fyne, imprifon, or baniſh to the New-plantations ſuch as are obſtinate; but to indemnify thoſe that will take the bond to live orderly in tyme coming; which is a Circuit power, but with leſſe expence to the King and country.

3^{tio}. A petition, by the Laird of MacIntosh, ſhewing that, by meer force and bangiſtry, the Macdonalds had poſſeſſed a part of his country this 100 year and more, tho he hes interrupted them alwayes, and gotten all that

the laws could give him; yet they still despised all, (which was *peffimi exempli*;) and therfor he craved a part of the King's forces, to be sent with a commiffion of fire and fword, to put him *manu militari* in poffeffion, that they might not laugh at the ineffectualneffe of our law in its executive force. It was thought not fafe at this tyme to fend away any of the ftanding forces fo far of, or to irritate the Macdonalds to break the Hylands; but they appointed him to caufe charge them of new under the pain of treafon.

No. 295, 29 *Augufti* 1684.—Ane Exchequer is called exprefse, to paffe my Lord
p. 91. Middleton's fignator and gift, fupercryved by the King, of Sir John Cochrane's lifrent efcheat, as denounced; and of his fone's lands of Waterfyde, fallen in his Majeftie's hands by the forfaultor of John Cochran, Dundonald's grandchild. (*Supra pag.* [90.]) As alfo to paffe the King's patent, erecting the Win-merchands of Edinburgh into a Company and Society within themfelves, and all to have liberty to enter, if they put in a flock; and none to have liberty to trade in win[e] but they, with power to make A&ts and regulations, &c. Ther was ane A&t of this kind defigned in 1670, to the Parliament then; fee the double of it, with reafons againft it, in my folio Manuscript marked B, folio 77.

No. 296, *Eodem tempore*.—Sir William Scot of Harden agrees with the King's
p. 91. Advocat, (who had got a gift of it,) for his fyne of 1500 lb. fterling, for his Ladye's conventicles, and abfences from Church, who demanded annuel-rent for it, from the date of the fentence. Harden propofed, that the Privy Counfell would fecure him againft falling into the fame deli&t for the future, feing his wife was ftill obftinate not to goe to Church.

No. 297, 30 *Augufti* 1684.—Mr. James Rennick, a field-preacher, who now
p. 91. headed theffe wild people difouning the King, is cited to appear to the 19 of September; and, in regard of his contumacy, he was, on the 20 of September 1684, by a proclamation of intercommoning, publifhed by the Privy Counfell, and printed, denounced fugitive, and all difcharged under the hieft perrill to refett or harbor him.

4 *Septembris* 1684.—At Privy Counsell, the Earle of Lauderdale pers-
shues the Earle of Home for a ryot, in spulzeing and violently drawing No. 298,
the teynds of Suinton; tho, by ane A& of Counsell, he was formerly p. 92.
discharged. Home, having acknowledged the fact, was sent to the Castle,
but, after 2 howers restraint, was liberate, and again discharged to medle
with thesse teynds *brevi manu*.

2^{do}. Hew Wallace, cash-keeper, pershues Bailzie of Torwoodhead to
desist from teinding the lands of Corstorphin, or assuming the title of
Lord Forrester. The Lords reponed Hew to the possession of drawing
the teynd; and discharged Torwoodhead to use the title of Lord Forrester;
and refused him an incident diligence to prove what the last Lord Foster
was in possession of.

3^{tio}. *Item*, Mr. Robert Bailzie of Jeriswood, having got his citation be-
fore the Privy Counsell, on a libell for resetting rebels, &c., he gave in
a bill, craving a delay, in respect of his utter inability to come abroad,
through sicknesse and indisposition; they appointed the Clerk of Register,
&c., to goe in to the prison, and to examine him upon oath, on the articles
of his libell which they now raised, fearing he might escape, and prevent
fyning, or any other punishment whatever, if he should quickly die: And
he declining, and shifting to depone; and they reporting it to the Privy
Counsell, they fyned him in 6000 lb. sterling, which differs litle from a
forfaultor. (See him *infra* forfault 23^d *Decembris*.)

Eodem tempore.—Gordon of Earleston attempts a new escape out of No. 299,
the Tolbuith of Edinburgh, and is upon the sclaits about 7 [o'clock] at p. 92.
night. It fell on this occasion to be debated, if they might not, for this
aggravation of his cryme, anticipate and abbreviate the terme set for his
execution, which was the 4^t of November; but they found the punishment
of breach of prison was not death, but only banishment, by law; and
therfor, would not abridge his day, but on the 20 of September sent him
to Blacknesse Castle.

5 & 6 *Septembris* 1684.—Mr. William Carstairs, son to Mr. John No. 300,
Carstairs, once Minister at Glasgou, is brought before the Secret Com- p. 92.

mittee of Counsell, and is tortured with the thumbikins, (as Spence was, *supra* pag. 88,) and confessed ther hes bein a current plot in Scotland thesse ten years past. Some ware for raising forces; others ware only for associating with the English, for holding out the Duke of York from succeding, and to preserve the reformed religion. He named many that ware upon the knowledge of it; as, the Earle of Tarras, Cefnock's elder and younger, with the other prisoners, Murray of Philiphaugh, Pringle of Torwoodley, Home of Polwart, Home of Baffinden, Mr. Gilbert Elliot, Scot of Gallowsheills, Hay of Park, Sir James Dalrymple, Mr. Robert Martin, Hamilton of Aikenhead, and, some gave out, the Dutchesse of Lauderdale, as a refetter of Argile since his forfaultor, and a furnisher of him with money; and one who offered, in 1677, to procure the phanticks and indulgence from the King for a summe of money. Fame wrongously also named Ker of Cherrietrees, Campbell of Caddell, Carnaigy of Balnamoon, the Lairds of Broddy and Grant, Crawford of Ardmillan, Elliot of Stobs, Murray of Spot, &c. Such of them as could be got are presently apprehended, and put in cloffe prison; and then Major Monro, and Philiphaugh are first examined; and standing on ther denyall, they are threatned with the boots; which makes them ingenuous, and confesse ther acceffion. This did so discompose and confound Alexander Monro, to discover others, that he desperatly offered money to the keiper of the Tolbuith's man to run him throw with his sword; and roared, that he knew he behooved to doe some base thing before he dyed; and regraited that he should have denied it before the King, by lying so obstinately, and should have been instrumentall in drawing so many gentlemen upon that which would stand them both ther lives and fortunes, and he behooved to be a drudge and witnesse against them. Philiphaugh cast himself on the Hy-Treasurer's mercy and protection. Then Campbell of Arkinlas is examined, and he freely confesses he sent to Argile, since his escape, 100 lb. sterling; but, finding this draws to treason, he desires now to correct his deposition, and avers, it was only given by him to Argile's children, and not to himselfe. Duke Hamilton opposed thir torturings much; (*vide supra* pag. 7^t, at Earleston's case, citations anent it;) and alledged, that, at this rate, they might, without accusers or

witneſſes take any perſon off the ſtreit, and torture him ; *et nemo in aliorum caput eſt torquendus* ; and he retired, and refuſed to be preſent, on this ground, that if the party ſhould dye in the torture, the Judges ware liable for murder, at leaſt ware ſeverely cenſurable.

It was doubted, how far thir teſtimonies extorted *per torturam* can be probative againſt 3^d parties, ſeing witneſſes ſhould be ſo far voluntar and ſpontaneous as to be under no impreſſions or terrors of fear of life or limb ; others judge them beſt to be credited then. Some thought our Privy Counſell would have been at ſome loſſe, and contracted ſome tach by this cruall torture, had they ſuffered it as they did the boots, (which they regarded not, ther legs being ſmall,) without diſcovering or revealing this conſpiracy ; but ther confeſſing tends to juſtify the Privy Counſell's procedure.—The authors of this invention of the thummikins, ware Generall Dalzeell and Drummond, who had ſeen it in Moſcovia. It's alſo uſed among our coilziars in Scotland, and is called the Pilliwincks. Of the inventors of cruall ingeins, as Phalaris' Bull, and our Maiden, &c., ſee *alibi* ; they oft ſuffer by them *nec lex eſt juſtior ulla quam*, &c. In England they could never have expiſcated this plot, for ther law allows no torture. *Quid juris* If they refile or goe back of thir extorted confeſſions, whither may ther torture be repeited and renewed, *ſine novis indiciiis*? See the doctours and lawyers on this.

11 *Septembris* 1684.—The four commiſſions of Lieutenances are ap- No. 301,
pointed and eſta bliſhed, at Privy Counſell ; viz., one to ſit at Glaſgow, p. 93.
for Cliddifdale, Renfrew, and Dumbarton ; to be keiped by the Duke of
Hamilton, Colinton Juſtice Clerk, and Lundy Treafurer-depute ; who
are to be guarded by my Lord Roſſe's troup, and Captain Ingliſſe's dra-
gouns. 2^{do}. Another at Air, by the Earle of Mar, Lord Levifton, and
Generall-major Drumond ; to be attended with the King's wholle troup,
and Generall Dalzeill's dragouns. 3^{tio}. At Dumfreis, for Galloway,
Nithifdale, &c. ; by the Hy-Treafurer, and his ſone Drumlanrick, and
Claverhouſe, whoſe troup, with Drumlanrick's, and Captain Strauchan's
dragouns, is to guard them. 4^{to}. At Dunce, Jedbrugh, Peibles, and
Selkirk ; for the Merſe, Tivedale, and Forres ; the Lords Balcarras,

Lord Yester, and William Hay of Drummilziar; the Earle of Balcarhouse's troupe, Lord Charles Morrayes dragouns, with the halfe of Meldrum's troupe, being ordained to guard them. Before they are to cite delinquents, they are, by ther instructions, first to examine some of every parish, (like a Porteous-roll,) to expiscat who most be conveyed as irregular. (See *infra* more pag. 96.)

2. *Item*, Sir John Dalrymple's wholle papers are seized on, and inspected, and himselfe committed close prisoner to the Tolbuith of Edinburgh; and his 2 brether, Mr. James and Mr. Hew, are put under bayll to answer when called. The Hy-Treasurer was incensed that Sir John would give them no discoveries against the Earle of Aberdein; and that, by his father's retrait he had secured his estate from ther grips. They caused bring him betuen a greit guard of souldiers in open day-light, from the Abbey, on foot, to the prison, like a malefactor. (See *infra* pag. 116.)

No. 302, *Eodem tempore*.—The King having made the Earle of Middleton our
p. 93. Secretary, to be Secretary of England, in place of Sidney Godolphin; so that the place of a conjunct Scots Secretarie vacated, ther fell some contest betuixt the Clerk Register and Lundy Treasurer-depute, which of them should succeed Middleton: But it was carried that Lundy should get it, and the Earle of Kintore should be Treasurer-depute in his rume; as also to get Meldrum's troupe, who was now turned unfit and lethargick: but, on Meldrum's death, Airley was reponed to it.

2^{do}. Polwart, having advertishment of the order to seize him, fled out of the way; and after search, not being found, his Lady told them he had lain 2 years already in prison, on a caprice of Lauderdale's, without ever so much as giving him a reason or a cause for restraining his liberty; that he had not a body to indure it, and, therfor, could not be blamed to retire, unlesse they would let him know why they sought him. And some thought it apparent, that the discontents Lauderdale's violent government raised in the country, as against Polwart, Major Monro, James Stewart, Mr. Carstairs, &c., and the Hyland host in 1678, did so ferment and imbitter fundry men's spirits, that they took sanctuary in this Scots conspiracy and association.

Eodem tempore.—Argile's charter-kift, and wholle papers and evidents, No. 303, are found in a mean tennent's house in Argileshire, put up in eight p. 94. puncheons or barrells; which was a farder stroack tending to the extinction of that family.

15 & 16 *Septembris* 1684.—Ther are 2 A&ts of Privy Counsell made; No. 304, one, that none travell out of thosse shires and jurisdictions wher the p. 94. commissiions of Lieutenances are to fit, till they be ended, without they have a formall passe from some Magistrat, that they may not flie from justice. 2^{do}. That no Masters of ships, or boats, export or import any person, till first, upon oath, they give up the names of all ther passengers, leift they carrie in or out Rebels; and that all heritors on the sea-fyde shall be answerable for any that shall be landed in ther creiks or harbors; which seems hard.

3^{tio}. They distribute and seperat the prisoners: Cefnock and his son, with one Master John Rae, a minister, are sent to the Basse; Comisar Monro to Stirling; Earleston, and Park Hay, to Blacknes; Weir of Newton to Dumbarton; Mr. James Walwood to Couper in Fyffe, &c.

4^{to}. The Privy Counsell considers the bill given in by Sir James Stamfeild, for the manufactory at New Milnes, craving they may be ex-
 4
 eimed from paying any excise for ther drink, conforme to the [40th] A&t of Parliament in 1661; and the Treasurer, out of pike to Sir James, causses refuse it.

16 & 17 *Septembris* 1684.—Ther is a strict and severe search throw No. 305, the Toune of Edinburgh for suspected persons, and fundry are appre- p. 94. hended; as all Mr. William Cheisleye's family, himselfe being from home; Robert Cheisley his nephew, Thomas Waddell spurrier, one Selkirk a tobacco cutter, with some Quakers, and Tom Lenden the Anabaptist, for not keeping the Church. And a Committee of the Privy Counsell appointed the Bischop of Edinburgh to convey all his Ministers in the old Church, with ther Elders, Deacons, and Bedells, [and] Church-war-
 5
 dens, and caused them all swear, (tho the A&t of the Test in 1681, injoyns only the Ministers to give up lists on oath,) what irregular persons they

knew ware within ther respective parishes and bounds; and, on ther delation, the ports are again shut, and the grenadiers and other forces drawn up in the streits, and all commanded by touck of drum to retire home, under the pain of death, and not to be seen on the streits, which made a great consternation; and a new searck began, and many ware apprehended and carried to the main-guard, and, amongs the rest, 2 non-conformist ministers, viz., Mr. George Campbell, and Mr. John Park, (on ther liberation they both retired to Holland:) however, the fray ended in nothing, but a general wonderment what could occasion it, or whom they ware seiking. It moved laughter to see them imprison children; tho ther be ane A&t that parents shall be liable and censureable, if they bring not ther children to the Church after they are seven years old.

No. 306, 20 *Septembris* 1684.—Dr. Faw [Fall] brought doune the 2 *congee's d'elire*
p. 94. for our vacant Bischopricks, viz., Mr. Arthur Roffe, Arch-Bischop of Glasgow, to be transported to St. Andrews, in place of A. B. Burnet, deceissed; and Mr. Cairncrosse, the new Bischop of Brechin, to be translated to Glasgow; and one Doctor Drumond, Minister at [Muthill] to be created Bischop of Brichin.

Ib. § 2. 24 *Septembris* 1684.—Hamilton of Aikenhead is brought in prisoner to Edinburgh, and is confronted with Mr. Carstairs.

No. 307, *Eodem tempore*.—Some of the Colledge of Physitians at Edinburgh,
p. 94. out of pick to some of ther members, as Doctors Burnet, Hardy, and Stevinson younger, obtained from the Privy Counsell ane order, that all who practised medicine within Edinburgh should take the test, else they might be debarred. They ware *per expressum* omitted in the A&t of Parliament, and the Test was afterwards offered *ex super abundanti* for ther Præses and Cenfors of the faculty; and now they would stretch to them all.

No. 308, *Eodem tempore*.—By ane order from the King, ther is a searck made
p. 94. in Berwick for Polwart, Mr. James Daes, and other our Scots fugitives

refiding ther; but they had advertifhment of it before hand. Ther was alfo a *quo warranto* ifhued out, at the King's Atturneyes instance, againft the Charter of Berwick, as forfault by this mifdemeanor of refetting, and alfo becaufe they had refused to furrender, as many borrows and corporations had done. But the King's difficulty lay in this, that, by a claufe in their Charter, they can only be judged by ane inqueft of 12 Burgeffes of ther ounne Toune. Yet in November 1684, having debarred fundry of the Whig party by excommunication for not keiping the Church, they by a vote furrendered their Charter to the King.

Primo Octobris 1684.—Murray of Philiphaugh is liberate from prifon, No. 309, on the baill of 1000 lb. fterling, to appear when called; as alfo, Gallow-^{p. 95.} sheills; and remiffions ware fent up for them, and Monro, and others who ware to be ufed as witneffes in the plot. The Earle of Tarras, by a petition, cafts himfelfe in the King's mercy and will, acknowledging the guilt, and excufing it by his youth and ignorance; and hopes to obtain a pardon.

Eodem tempore.—One Marion Purdie, dwelling at the Weft Port of No. 310, Edinburgh, once a milk-wife, and now a beggar, is apprehended and ^{p. 95.} imprifoned as a witch, and many delations of malefices, by laying on difeafes, freinzies, &c., come in againft hir. She dyes of cold and poverty in prifon about the Chriftmaffe; the King's Advocat giving no great notice to fuch informations againft witches.

13 *Octobris* 1684.—A fouldier in Collonell James Douglaſſe's regiment No. 311, is fhott to death in the links of Leith, for lifting his hand and giving a ^{p. 95.} blow to his ferjeant. This is ftriēt military difcipline againft mutineering. Collonell Douglas keips them very hard every day training and exercifing, and ftudies to get them all of one pitch or height, and will let none of them keip ther bairds long, or to have ill gravats, or gravate ftrings, that they may look young and brifque; and when they want he buyes new ones with ther pay, and caufes them all ty ther hair back with a ribban, fo it cannot blow among ther eyes when they viſie at ther fying;

and he difcharges any of ther officers to keip cellars, wheirby they made the fojors wait ther pay in drinking.

No. 312, 14 & 15 *Octobris* 1684.—The Toune of Edinburgh make ane A& of ther Counfell, taking of the pay of the Toune-guard or company commanded by Captain Patrick Grame, from the Burgefles, and neihbours, and laying it on the Toune's common good, to be payed out of the firft and readieft of the Toune's impofition, or Excife Chamber, (which fhould not be difpofed on without confent of the Colledge of Juftice, and Shires;) and the reft of ther expences on that company, viz., for ther coats, drums, cullors, and the falaries of collectors, &c., to be laid on as ane additionall cefle with the King's taxation. Ther pay is yearly 13,000 lb. Scots, and the other incident charges are 9000 mks. So this unneceffar company ftands Edinburgh neir 30,000 mks. per annum; and tho' part of it be now tane of the neihbours, yet feing it affects ther common good, ther debt will be 30,000 mks. yearly the longer of paying.

No. 313, *Eodem* 14 & 15 *Octobris* 1684.—The Synod of Edinburgh meits, and the Bifhop intimats to them, that, conforme to the A& of Parliament anent the teft, they moft give up on oath, (tho' the faid A& does not require oath,) a lift of all the irregular and non-conformift perfons in their parifhes, who keip not the Kirk, or breaks the other pænall laws relating to the Church. Some of the wifer Clergie thought themfelves litle beholding to the Bifhops, who in Parliament, at the paffing of the A&, fuffered this bone to be put into ther foots; for they had the miffortune of odium eneugh in the country already, tho' they ware not made the delators and accufers of their peeple, therby more to alienate and lofe their parifhioner's affections; and they would have turned it over on ther elders, tho' they are ather heritors, or fuch as are fubject to them.

2^{do}. Mr. Robert Monteith Minifter at Carinton his affair is reported, how, on a probation of fundry very groffe mifcarriages, he was fufpended. The Synod refers it to the Bifhop and Presbytrie of Dalkeith to deall with him to grant a dimiffion; otherwayes to threaten him with depofition.

During this moneth of October 1684, the Commiffions of Privy Counsell, <sup>No. 314,
p. 96.</sup> (above mentioned page 91 & 93,) ware fitting in the feveral Shires: They caufed the minifters and others to delate who ware irregular, and non-conformifts in ther parifhes; and then caufed cite them; and if they ware willing to take a bond to be orderly in tyme coming, they ware difmift.

In the Merfe Circuit, they fyned Pringle of Rig, Shireff-depute ther, in 500 mks., for oppreffing the peeples, befides the modifieng and decerning the reftitution of the parties dammage. They took ftrict tryall and inquiry after the oppreffions and cheats of one Lorrain, and one Alexander Martin in Dunce; and this laft they fynd in 1000 lb. fterling, and deprived him of his place as Clerk. One was conveyned ther for chriftening his child by one Lamb, a conventicle preacher, who was in the fugitive printed roll: The man alledged, that could not put him *in mala fide*, becaufe he was only defigned Lamb, without his firft name: The Committee fand it was the fame, unleffe he condefcended on another.

The Glasgou Circuit emitted a printed proclamation, difarming all thofe Shires.

2^{do}. They imprifon Schaw of Greinock, Montgomrie of Skelmuirly, Pollock Maxuell, Cunyghame of Craigance, Porterfield of Ducholl, &c. and gave them all indytements for refetting rebels, and referred them to oath, (declaring ther confeffion of guilt fould not infer life nor limb,) with a defigne to fyne them in fummies near æquivalent to ther eftates, as they did, (*supra pag.* [92,]) with Jervefwood.

3^{tio}. They declared the places of the whole indulged Minifters ther (being to the number of 36) void, becaufe of fome breach and tranfgreffion of the Privy Counsell's inftructions; and caufed them enter their perfons in prifon; as Mr. James Curry, who was indulged at the Kirk of the Shots, &c.

4^{to}. They prævailed with the gentry and freeholders of the faires of Clidfdale and Renfrew to offer ane addrefs to the faids 3 Lords commiffionat, undertaking for themfelves, tennents, and families, to keep the haill ecclefiafticall laws againft conventicles, feparation from the publick

worship, private baptisme, and marriages; and not to harbor or refet Rebels, under the pains contained in the A&ts of Parliament; and farder, offered voluntarily to the King for raifing a troupe, 3 moneth's cefse more then what is already impofed, to laft for 2 years to come, and the firft termes payment to begin at Martinmaffe 1684.

The fhire of Berwick being alfo urged, (for it evidently appeared that this voluntar offer of a cefse, *ἔχων ἀεχωντικὴ θυμῶ*, was the great project and defigne of this Commiffion, tho, by the laws fundamentall of New-Jerfy, fuch offers extra-parliamentary are declared treasonable,) ather to give 4 moneth's cefse, or to maintain a troupe; they yielded to 2 moneth's cefse. Home of Wedderburne, Mr. John King in Coldinghame, &c., voted againft it, and faid they could not but fufpect it, when they faw Lanton and other phanaticks in that fhire fo forward to grant it: *Timeo Danaos et dona ferentes*. The Earle of Home not to be behind, in a meiting he keiped, out-bad a moneth more. If this courfe hold, ther neids no more Parliaments to give the King money. But you'll fay *Volenti non fit injuria*: Only the plurality of heritors cannot oblidge diffenters; and how can tutors for minors, or chamberlains for abfents out of the country, yeild to this offer, unleffe they get ane A&t of Parliament authorizing the payment, and declaring it fhall be allowed in their compts?

The Hy-Treafurer caufed the fhire of Dumfreis offer 5 moneth's cefse for 8 years; but my Lord Dumfreis oppofed it at Ayr, and defired to know when they would be at ane end of taxes, and then he fhould offer as chearfully as any.

Wher they had clear probation of refet of rebels, theffe they forfaulted; but wher that was not clear, they referred the libell to (near 80 heritors) their oaths. Then they fand the contributing to Argile treason, and in Ducholl's cafe, the concealing of it (tho he refused to give any thing) likewayes treason. They fyne Mr. Arthur Hamilton advocat, Bailzie of Cunyghame, in 500 mks, for not attending them, tho' he was burieng his man who had accidentally drowned in Irvin water.

Ther is one [Patrick] Muir, brother to Rowallan, one [George] Turnbull, [James] Cowan, and [James] Refton tennents befide Berwick, are apprehended and fent in prifoners, as having been at Bothuel-Bridge,

Argile's Parliament robes are found in the house of [John Tait,] and feized on.

Mr. William Cheifley and James Scot in Bristo are imprifoned, but let out on caution, the last, because among his papers they found that he had receaved payment of a debt from one in Tivedale, who was intercommoned. *Queritur*, What sort of converse this is, if he saw not the person? One was quæstioned for corresponding with rebels, because he had poinded from one denounced a criminall rebell; but tho' the poinding may be null, and the Exchequer, or the King's donator præferred to the goods, yet this cannot be construed a correspondence.

Douglas of Mayns, his lady and children are led as witneses against him to prove his resetting. This was called contrare to principles, and to *lex 5, C. de testibus*, and *l. 9, D. eodem*.

Glen the stationer, and severall Burgeses of Edinburgh, are cited in by the Magistrats, for not frequenting the Kirk, but the Lady Traquaire, and other Papists, are dismissed, and ther citations declared to have been but a mistake.

Ther officiated as deputes to the King's Advocat in ther 3 courts, (he attending one of the 4 himselfe,) Mr. Charles Gray, Mr. Rorie MacKeinzie, and Mr. Robert Colt. Their Clerks ware the 2 Clerks of Privy Counsell, Mr. Thomas Gordon the Criminal Clerk, and his servant; each of them in a severall distrikt. This Commiffion was to last till the 1 of December 1684.

WINTER SESSION, 1684.

Primo Novembris 1684, being Saturday.—The Earle of Perth's No. 315, patent as Chancellor, is produced to the Lords of Session, and recorded ^{p. 98.} in all the Sederunt books; (even as Aberdeen's was tuo years ago, on the 1 of November 1682;) and, having taken all the oaths, he in a speach exhorted the Lords to speedy and impartiall justice; and that his Majesty desired them to regard no letters from him, but such as required them to give the peeple ready dispatch and justice: which the Lords promised and undertook.

No. 317, 4 *Novembris* 1684.—Abercromby of Fetherneir's Lady, as fister to the
p. 98. laft Lord Semple, is ferved air of line to him; as alfo Robert Semple, as
air maill, is, by ther moyen ferved air maill by 2 fervices, one generall
the other speciall; tho' Semple of Cathcart, founded on a tailzie by the
laft Lord, failzeing airs of his oun body. (See *infra* 7 *Novembris*.)

5 *Novembris* 1684.—This day was fo far remembred this year, that the
Lords would not fit; and ther ware bells rung, and fome bonfires; but
nather canons nor fermon; tho' the Lords of Seffion fent to the Bifhop
of Edinburgh, defireing he might appoint one to preach in commemora-
tion of the Popish Gunpouder Plot, yet keiped in England; but he
pretended the advertifhment was too fhort.

No. 319, 6 *Novembris* 1684.—At Privy Counfell, Lundie's patent as conjunct
p. 98. Secretary with Murray, in place of Middleton advanced to be English
Secretar, is prefented, and he admitted, fworn, and receaved.

The Shireff of Tivedale or Roxbrugh, having fyned Sir Andrew Ker
of Greenhead, Ker of Chatto, Scot of Alfton, Scot of Haffinden, &c., for
ther Ladies abfenting themselves from the Church; and they having
fufpended, and ther fufpensions called this day, the Lords of Privy
Counfell referred the confideration of ther cafe to a Committee. But
Haffinden feimed to have a good defence, that when his Lady began to
abfent hirlfelfe from the Church, he did put hir away, and ferved ane
inhibition againft hir.

No. 320, 7 *Novembris* 1684.—A letter from the King, obtained by Sir William
p. 98. Bruce at London, to the Lords of Seffion, is produced and red; bearing,
that he had confidered ther quærees, fent up to him the laft Seffion, anent
the 2 prize-fhips, called the Patience and Palme-tree of Sunderberg,
with the Articles of Peace betuen him and the King of Denmark, and
the formula of the paffes; and having advifed with the custome of the
Admirality of England, he finds that ther carrieng double documents,
and ther wanting formall paffes, was a good ground for bringing them up,
tho' they ware fhips belonging to his alleyes, the King of Denmark's

subjects; and that the privateers can be no farther liable in any dammages or expences, but allenary, for the price contained in the roup and vendition of the ships made at Leith. By this opinion of the King's, the capers gained a part of this cause, and the strangers, with John Inglis ther factor, lost it. (See this case in my folio law Manuscript E, at the 14 of Februar, and 24 of November 1682, and the 14 of Februar 1683.) Some thought it *mali exempli* to trouble the King with such proccesses: but, 1^o it was at the parties desire: 2^{do}. It is a matter of Governement to explain treaties with allees.

7 & 8 *Novembris* 1684.—Fetterneir and Robert Semple, (*de quo supra* No. 322, 4 *Novembris*,) gives in 2 petitions to the Lords: one craving, That the rents of the estate of Semple may be sequestrat during his dependance against Cathcart. The 2^d, That the writs and charter-kift of that estate may be secured or sequestrat till it be found who hes best right. As to the 1st, The Lords appointed 2 factors for uplifting the rents lying in 2 shires, they finding caution to make the same furthcumming to any that *ex eventu* shall prævaill. But refused the 2^d, anent securing the writs, in regard ther was a proccess of exhibition of them raised and depending, at Cathcart's instance.

8 *Novembris* 1684.—The Magistrats and Toune Counsell of Edinburgh, No. 324, by ane A&t, unite, annex, and incorporate the trade of the Litsters of Edinburgh into the Deaconry of the Bonnet-makers, which was decaying and turning weak; as Abotshall, during his Provestry, had adjoyned the Hat-makers to the Walkers. This strenthens the Trades of Edinburgh against the Merchands. (See the Litsters' recommendation they got from the Parliament, in September 1681, in my folio Law Manuscript E, page 213.)

10 *Novembris* 1684, being Moonday.—At Criminall Court, the Earle No. 325, of Loudon, and George Lord Melvill, having been continued from the 8^t and 9^t of Aprill last (*supra pag.* 76 & 77,) to this day, they are now called on again, and a testificat is produced for Loudon, in the termes required by the A&t then made, viz., under the seall of the Toune and

Univerfity of Leyden, bearing that the Phyfitians had deponed before them on his diftemper; together with a petition, representing that his foot was fo exceiding fore, that theffe 3 moneths he could not fet it to the ground; and craved that the dyet for his appearance might be continued till Summer, when he can travell; as alfo produced ane instrument, wheir, in O&tober laft, one Grier a tailor, was offered cautioner for his appearance. The Lords fand the cautioner then offered not fufficient; and none being now offered, they rejedted the petition, and testificat, and denounced him fugitive. But it was afterwards attested that he was dead in Holland before this his denuntiation.

2^{do}. For Melvill it was alledged, they offered to prove he was indisposed and unable to travell; for proving which they craved the terme of law, contained in the 8^t chapter, § 20, of the firft Book of *Regiam Majestatem*, of 40 dayes for theffe *ultra mare*, and ratified by the 114^t A& of Parliament, James I., in 1429; and offered to find caution to prove it. The King's Advocat answered, That effoignees and excufations are, of ther oun nature, but dilators, and fo ought instantly to be proven; and as to the 40 dayes mentioned in the Majesty, they have had fince Aprill laft 6 tymes 40 dayes. Replyed, The 40 dayes are after the preponing of the excufe, which was not then preponed. The Juftices repelled the defence, and denounced him likeways fugitive; and difcharged all the liedges, under the payne of treason, to keep any correſpondence ather with him or Loudon.

3^{tio}. Then the leading of probation on the proces of treason againft Sir John Cochrane, and Lockhart of Kirkton, (who ware denounced outlaws and fugitives already,) in order to the forfaulting of them, was continued to the 1 Moonday in Januar 1685. And John Weir of Newton was continued to the fame day.

4^{to}. *Item*, The Lady Monteith's proces againft hir Lord, for bigamy with Catharen Bruce, Blairhall's fifter, was called; and thee not infifting, the Lords of Jufticiary fand they could not force hir to infift, but only defert the dyet in *hac instantia*: but fell upon this new invention, that my Lord Monteith ſhould raife a proces of declarator before the Criminall Court againft the King's Advocat, and his late Lady, (now denounced fugitive

on his decreit of divorce, for hir adultery,) to force them to infist in that action of bigamy, with certification, if they doe not, he shall be affoilzied, and they never heard afterwards to pershue. This seimed a rationall method, tho' new in criminalls, but not in civills; founded on *Lex Diffamari* 5^{to}. *C. de ingenuis manumissis*.

5^{to}. Ther ware 2 things complained of in this Criminall Court, against the King's Advocat, as very prejudiciall to pannells. 1^o. That the King's Advocat should be permitted to examine witneses on a præcognition, who will certainly be so far partiall and concerned, as to have them loading the pannell all that may be; for this task should be left only to the Justices. 2^{do}. That he should not be allowed to stay within with the Criminall Lords, when they are advising cases, wher he is a party *ratione officii*; (this he is not allowed in the Session, when the Lords adverts to it;) for this certainly overaws and influences some weaker Lords. Sir John Nisbet, when King's Advocat, introduced thir practises, but he declames against them now.

11 *Novembris* 1684.—Mr. Æneas Macpherson advocat, by a commis-
sion from the King, is made Shireff-depute of Aberdeanshire, of which
place Andrew Frazer of Kinmundy is in present possession of. Such
deputations from the King are not ordinary. By the late A& of Parlia-
ment in 1681, he may adjoyne to thosse that are already, but not substitute
one in ther place, by depriving the former Shireff-depute. This was
the Marquis of Huntlye's doing. No. 327,
p. 101.

Eodem die.—Francis Scot, keiper of the Minute Book, turning vale-
tudinary, the President prævailled with him to give a demission in favors
of Mr. Patrick Falconer, writer; Francis retaining a share of the profits
during his life, and getting in a litle summe. They say the Clerk Registrar
opposed it, till he got 150 lb. sterling of gratuity for his consent; so Mr.
Patrick entred to the exercise of the office this day, and Francis Scot
dyed shortly after. No. 328,
p. 101.

12 *Novembris* 1684.—The Toun Councell of Edinburgh, judging it No. 330,
p. 102.

inconvenient to have fundry Treasurers and Collectors of their rents, they, by ane A&t, appoint George Drumond, present Toune Treasurer, and his suceffors in office, to be sole Treasurers for the Toune's hail revenue and common good; and that the annuity, feat-rent, excise chamber, and all shall be brought in to him in tyme coming.

No. 331, 13 *Novembris* 1684.—Three fellows called [John] Wat, [John] Semple,
p. 102. and [Gabriel Thomson,] who were suspected and apprehended as owners of the late apologeticall declaration of war against the King, and threatening to murder all ther persecutors, (which was affixed on the 8^t of November last, on Lithgow mercat crosse and church-door, and fundry other places,) and brought in and examined, and they ouned the contents of that scandalous paper, and did obstinately byde the torture of the thummikins without shrinking, till they ware taken out of them, and then they fell doune. See more of this *infra* 24 *Novembris*.

No. 332, *Eodem die*.—Home of Polwart younger, having fisted himfelfe to the
p. 102. Chancelor, in regard he heard they ware feiking him, was committed prifoner; but they would rather have had his father. They did the same with young Torwoodley.

No. 336, 17 *Novembris* 1684.—Sir John Cunyghame, advocat, dyes: See it *alibi*.
p. 105.

No. 339, 19 *Novembris* 1684.—The Toune of Edinburgh make ane A&t, ordain-
p. 105. ing all ther Burgeffes, poffessors of the low stories on the Hy Streit, to hang out bowets with lighted candles, (this would be more beneficial in cloffes then in the Hy Streit,) after day light is gone. But the Privy Counfell should injoyne other inhabitants, as weill as Burgeffes, to doe this, the Toune's authority not reaching to this. This practife lasted not long.

No. 340, 20 *Novembris* 1684.—The news came this morning to Edinburgh, that
p. 105. some of the desperat phanatiques had last night fallen in upon 2 of the King's Life-guards, viz., Thomas Kennoway and Duncan Stewart, who ware lying at the Swyne-abbay, beyond Blackburne in Lithgowshire,

and murdered them most barbarously; wherupon the Privy Counsell ordained them to be searched for and pershued, if it ware possible to apprehend them; and called for Carmichell, landlord of the house, and examined him and others. This was to execute what they had threatned in ther declaration of war. See of this in my Historick Manuscript.

21 *Novembris* 1684.—At Privy Counsell, *post meridiem*, Mr. Ezechiell No. 342,
Montgomrie (whom we see, *supra* 10 *Aprilis* 1684, flee to Ireland, and p. 107.
they say is turned a preacher ther) is called for; and because of his not appearance is denounced fugitive.

2^{do}. George Dollas, Writer to the Signet, John Drummond, and other creditors of John Melrosse's, having given in a petition to the Secret Counsell on the 17 of April last, shewing that a land at the head of the Kirk-heuch of Edinburgh was theirs, and was brunt doune in Januar 1676, and valued by 15 sworne men, in October theirafter, to 4000 mks., and craving payment of it from the Toun or King. The Lords then ordained the Magistrats of Edinburgh to pay the same, with the annuel rents their of since the appretiation, (tho' nather due *lege* nor *pacto*, but as the price of land,) in regard the Toune enjoyed the benefit, by getting a spacious entry to the Parliament Close. The Magistrats having suspended this decreit, and the cause being debate this day; it was argued for the Toune, that the benefit did not accresce to them, but only to thosse heritors who had built the adjacent tenements, viz., Mr. Alexander Paterfone, &c., who not only had some of the bounds wheron Melrosse's house once stood, included within ther fabricks, but also the benefit of the prospect and free air, by the demolition and removeall of that house. The Lords fand Melrosse's creditors behooved to instruct a sufficient right to that tenement, and that any of the adjacent builders who reaped benefit theirby, behooved to reimburse and releive the Toune of Edinburgh *pro tanto*, but, in the mean tyme, fand the Toune liable to the heritors complainers for the price valued *in primo loco*; which was thought hard. Wheiron the Toune raifes a proces for ther releiff, against the heritors of thosse new lands, viz., Hew Blair, Mr. Alexander Paterfon, &c., who enjoy the benefit of a good air, and a prospect by the demolishing that

house. The Lords of Privy Counsell having heard and advifed this cafe on the 2^d of December, they, in regard of the benefit forfaid, ordained all, from the cunzie of the Church fouthward, to pay æqually and proportionally amongs them a 100 lb. fterling to the Toune of Edinburgh, towards ther releiff and reimburfement; and declared nothing could be reared up ther in tyme coming, to obftru& the beauty and pleafure of ther profpe&.

3^{tio}. The Magiftrats of Edinburgh are ordained by the Privy Counsell to take up a lift of all ther inhabitants, to fee if they could find any of the murderers of theffe 2 of the King's guard; and if they could find any who ouned this late declaration of war. (See it *infra* 29 *Novembris*.)

No. 344,
p. 108.

21 *Novembris* 1684.—Andrew Fletcher of Salton is cited on criminall letters, at the mercat-croffe of Edinburgh, and pear and fhore of Leith, on 60 dayes, (as furth of the country,) to compeir, for converfing with Argile, and other rebells abroad; (for his converfe with Monmouth cannot be criminall, he having got a remiffion from his Majefty in December 1683, unleffe he has committed fome cryme fince that tyme.)

2^{do}. By a letter from the King, and a proclamation of the Privy Counfell over the Croffe of Edinburgh, intimation is made, that it is his Majeftie's pleafure, that the Parliament fhould meit on the tent of March nixt. The defigne of this was thought to be, to forfault the rebells who had fled, which the Court of Jufticiary could not doe; they being only authorized by the [10th] A& of Parliament in 1669, to forfault fuch abfents allenarly as were guilty of perduellion and actuall rifing in armes. Some alledged, it would be furer to call a new Parliament, becaufe fuch as ware to be forfaulted, and the other enemies to the Governement, had this crack and flaw to charge upon this Parliament, that throw miftake and oblivion, a year ago, it had been fuffered to fleip without a prorogation theirof made *debito tempore*. But our ftatefmen thought this folemne proclamation fupplied this defe&.

No. 345,
p. 108.

Eodem tempore.—Mr. Fofter, minifter of the Caftle of Edinburgh, is fufpended for feinzeing his Bifchops warrand for marrieng 2 perfons, and for fundry other fcandalls.

24 *Novembris* 1684.—At Criminall Court the 3 fellows, mentioned ^{No. 346,}
^{p. 109.} *upra* 13 *Novembris*, viz., Watt, Semple, and [Thomson,] are arraigned on
this ground, that ther being now a declared war by that rebellious party
in armes, and who had already execute ther bloody declaration of war,
by killing 2 of the King's souldiers, yet the pannells refused to disoune
the said paper as treasonable, and so ware guilty of neutrality; which
was not to be tolerat *in statu belli*: For ather they ware on the King's
fyde, or for thesse rebels; if on the King's fyde, then they might and
ought, in duety, to declare ther detestation and abhorrence of it; if they
approved it, then they incurred the pain of treason; and to stand indif-
ferent trimmers *in hoc statu belli* was impossible, seeing thosse who ware
not for the King, ware, in such a case, against him. This not disouning,
(tho' a new case,) yet the Justices, with the advice of the Privy Counsell,
found to be treason; and this was not condemning men for naked
opinions: For 1^o. They had been tortured, and yet refused to disclame it.
2^{do}. They ware found with thesse declarations of war in ther pockets.
3^{tio}. They ware certified of hanging if they would not give a positive
categorick answer; but if they would feik a tyme to be instructed, they
should have it. Some thought a proclamation should have preceeded,
advertishing them of the certification of hanging, if they did not disoune.
Thus when Semple saw he could not avoid hanging by his cautious ter-
giversings, he then openly owned and avowed the said paper as containing
nothing but what they ware bound to. The other 2 shifted, that if it
was agrieable to the Word of God, then they ware for it; but being
urged to give ane instance where God's Word allowed murder, they ware
silent; tho' they might have wrested Moyse's killing the Egyptian,
Phineas running Zimri and Cozbi throw the body, Ehud's stobbing King
Eglon, &c., but thesse ware heroic impulses, expressly allowed by God,
and they ware magistrats, at leist the 2 first. The Assise found them
guilty; and they ware sentenced and condemned about 3 a'clock, and
ware immediatly carried doune to the Gallow-lee betuen Leith and
Edinburgh, and hanged ther before 5 at night, which is a very short
advertishment and preparation for death. It is strange to find this
obstinacy have countenancers; for good black coffins followed them

doune Leith Wynd, and weemen, privily in the night, stolle ther bodies from under the gibbet, and carried them to the gate of the Grayfrier Church-yard, with a designe to have buried them their; but the Privy Counsell ordained ther corps to be drawn back again to the Gallow-lee, and the wright who made ther coffins, to be inquired after and apprehended, that he might discover who had imployed him: but the Magistrates of Edinburgh commonly furnish shifts to the poor malefactors. On this occasion was the [23^d] A&t of Parliament made 2^d June 1685.

No. 350,
p. 110.

27 & 28 *Novembris* 1684.—Porterfeild of Duchall, was thir dayes pannelled before my Lord Secretary Lundy, and the Justice Clerk, as they who ware commiffioned by the King to the Circuit held for Clidifdale, and ther power was to expire on the 1 of December, (*vide supra* pag. 96, *et seqq.*) for thir crymes of treason; 1^o That he had harbored and refet one Holmes, his officer, after he had come back from Bothuel-Bridge; and also, had oft harbored and intertained [Alexander] Porterfeild, his brother, who was excepted out of the A&t of Indemnity, for being at Pentland-Hills. 2^{do}. That Sir John Cochrane having come to him, and desired that he might lend 1000 mks. to a poor distressed freind, and he asking if he meant my Lord Argile, he did not deny it; and tho' he had refused to contribute any thing towards his assistance, yet he treasonably concealled that designe of raising money to my Lord Argile, then a declared traitor. Tho' he confessed the matter of fact, except refetting the officer, yet he alledged that the refetting his brother could import no cryme against him; feing refetting in law must be a concealling, abstracting, or hindring a rebell from being brought to justice or punishment; wheiras his brother, thesse 18 years, hes conversed openly at kirk and mercat, with all ranks of persons, even with the officers of the King's army, unquestioned by any, and went to London and componed the gift of his oun forfaultor, and took it in another person's name, (because himselfe refused the declaration,) but to his oun behooff, so that Doucholl was *in bona fide* to converse with him; and it was nothing but parsimony in not bestowing the expense that keiped him from a remission; and this not being adverted to he hes infected all the gentry in the West, by con-

verfing with them. As to the 2^d, he answered, that he knew not certainly if Sir John Cochrane meant my Lord Argile, when he craved the fubfiftance and contribution money. 2^{do}. Ther was none prefent who heard Sir John feik it but himfelfe; fo if he had reveilled it, he could not have proven the fame, and thus, by the 49^t A& of the Parliament in 1587, fuccumbing in proving another guilty of treason, he became guilty of the fame treason himfelfe. Yet Regent Morton was execute for concealling, tho' he could not have proven it. See Sir George Mackenzie's Criminalls, page 48, thinking this concealling to be no treason. It was great fimplicity in Ducholl to confefse, for they having no way of proving, if they had referred it to his oath, it would have reftricted the hazard to ane arbitrary pain. But the refet would have forfeited him, unleffe he had purged and reftricted it, by taking the Teft; which he would not doe. 3^{tio}. He alledged, what was given to ftrenthen a rebell to rife in armes ware certainly treason; but heir it was only charity towards the alimenting him; and, which is more, he abfolutely denyed to give any contribution at all. (See P. Atticus praftife, cited in Blaikwoods cafe in my other folio Law Manuscript E, at the 1 of Februar 1683.) The Privy Counfell, finding Douchall's qualified confeffion very narrow, they propofed the quærie to the Lords of Seffion, as the King's great counfell in law points, and who, by his letter, ware appointed to give the Secret Committee advice in dubious cafes; and they, by ther refolution under ther hand, found that the very conceilling the feiking of money towards the fupport of a declared traitor, was treason, yet this was thought very remote, for 1^o. Ther is the rebell himfelfe, who ftands guilty of the treason. 2^{do}. Ther is the interposed perfon who demands the contribution money for the traitors ufe, and this is alfo treason in him. 3^{tio}. Ther is he who gives it. But the naked concealler who refused to give it, he is only in the 4^t degree: fo, to reafon at this rate, to conceall thift committed by another landed man, fhall be treason in the not revealler, (only the difference is, aiding a rebell with money is treason by the common law, but thift in a landed man is only treason by a fpecial ftatute with us, and fo, *fictione juris*, is not to be extended *ultra fuum cafum*,) or rather this example, if I know another man harbors a rebell on his ground, I am as

guilty as the refetter is, if I do not reveall it. However, on this fubferyved opinion of the Seffion, the Commiffioners of Jufticiary fand the dittay relevant; and the affife fand it proven. So he was found guilty of treason. But the tyme and place of his execution was referred to the King, that he might apply for a remiffion; for it appeared, they only aimed at his eftate, which will be 12,000 mks. a year. All this proceedor, to prevent quarrelling, is ratified by the [7th] A& of Parliament in anno 1685.

No. 351, *Eodem* 27 & 28 *Novembris* 1684.—18 Minifters, being the Chapter of p. 111. Glasgou, met at Edinburgh, (becaufe the Bifhop of Galloway, who is ther fuffragan and conveyner, was not able to travell to Glasgou,) and conforme to the King's *congee d'elire* and recommendation, choife Mr. Cairncroffe to be Arch Bifhop of Glasgou. The 2^d A& of Parliament in 1617, with immemoriall poffeffion, ordains the Dean of Glasgou to be præfes of that meeting, but the Bifhop of Galloway ufurped the office at this tyme.

No. 354, 29 *Novembris* 1684, being Saturday.—Ther was no Seffion, becaufe, p. 111. by order of the Privy Counfell, (*ſupra* 21 *Novembris*,) ther was a ſearch throw the Toune of Edinburgh, in caſe they might find any of theſſe difaffected perſons, who difowned the King's authority, or adhæred to the declaration of war; and they gave the conſtables a power to exact oaths and declarations, as to ther loyalty; which ſome perſons judged arbitrary, and choiſed rather to goe to the Guard then give oaths to ſuch mean perſons who ware not magiſtrats; but frankly declared ther abhorrency of all diſloyall principles, when they came before the magiſtrats and others inveſted with power.

No. 355, 2 *Decembris* 1684.—The Lady Colvill daughter to [David Wemyſs of p. 114. Fingask,] is imprifoned in Edinburgh Tolbuith, by the Privy Counfell, for hir irregularities, and particularly for breiding up hir ſone the Lord Colvill in phanaticifme, and other diſloyall principles, and abſtracting and putting him out of the way, when the Counfell was going to commit his

education to others ; for which we have Acts of Parliament, as to the children of Papists, viz., 1 and 2, in 1609, which may be extended *a pari* to others.

Eodem die.—At Privy Counsell, Maxuell of Pollock, Cunyghame of No. 356, Craigence, one Caldwell, and fundry other Renfrew gentlemen, are ^{p. 112.} brought from prifon to the bar ; and ther, in respect of ther refetting rebells upon ther lands, and ther refusing the Bond and Test, and ther concealling Sir John Cochrane's requiring money from them for Argile, &c. : They are fyned ; Pollock in 8000 l^b. fterling, with this quality and certification, that if he pay 6000 l^b. fterling before the 1 of January nixt, then he fhall be liberat of the other 2000 l^b. ; if not, then to pay the wholle : Craigence in 6000 l^b. fterling, conditionally, that he may redeem it if he pay 4000 l^b. fterling before January nixt, but if not, then to be liable in the wholle : and fo with the reft, according to the value of ther eftates. This was as they fyned Jervefwood, (*supra* pag. 92,) and is a civil forfaultor upon the matter, being æquivalent to ther fortunes and eftates, *deductis debitis* ; and if the perfonall creditors be preveined by diligence upon the fyne, it will be præferred to them. Craig was of opinion, in his books *de Feudis*, pag. 38, that the Privy Counsell could nather cognofce *de capite* nor *de fortuna civium* ; but now it is otherwayes. Caput [] of the Englifh *Magna Carta* difcharges any to be fyned but *salvo suo contenemento*. See Coke's notes on it.

2^{do}. The Duke of Gordon, and the Duke of Nith or Queansberrie's patents to be Dukes are produced and allowed, and they admitted ; being formerly Marquiffes.

4 Decembris, 1684, *post meridiem*.—At Privy Counsell, Ballantyne of No. 358, Corehouse, Halcraig, James Young of Linbank (Duke Hamilton's Bailzie ^{p. 114.} in Straven,) and 8^t other Clidifdale gentlemen are called for, from Edinburgh prifon, and they are demanded if they will take the oaths of alledgeance and supremacy ; and James Young, in name of the reft, craving tyme, and to confer with fome of the Counsellors privily, anent the fence wheirin they could take it ; they ware remanded back till the

nixt day. At which tyme James Young being examined on his libell for refet, contributing money, &c., and it being reftricted to ane arbitrary paine, he adjected fundry alleviating qualities to his confeffion; but the Clerk not having minuted them as frivolous, he refused to figne his oath and depofition. (See more of them *infra*.)

2^{do}. The Privy Counsell grant a Commiffion of Jufticiary to Lieutenant Generall Drummond, to take a part of the forces with him to the Weftrenfhires, and to hang, draw, and quarter, by the military law, all that refufe to ounne the King's authority.

No. 359,
p. 114.

Eodem die.—The Colledge of Phyfitians having met at Edinburgh to elect a Prefident for the inshueing year, with Cenfors and other officers, conforme to the power granted them by his Majeftie's patent; and Doctor Stevinfon then Præfes, and fome with him, intending that Doctor Balfour fhould fucceed him, fome of the younger Phyfitians, led on by Doctor Trotter, made a mutiny and fhifme among them, who elected Doctor S. Robert Sibbald Præfes; he refused to accept for fome tyme: this occafioned much animofity and divifion among them.

No. 363,
p. 115.

9 *Decembris* 1684.—Secretary Lundy parts for London.

2^{do}. See my Lord Pitmidden's track on that maxim, "*Minor non tenetur placitare,*" *apud me*.

No. 365,
p. 115.

Eodem die.—At Criminall Court, ten of theffe wild Weft-country phanatiques are pannelled for adhæring to the late proclamation againft his Majefty, and for difouning his authority. 6 of them ware fo wife as to refile; the other 4 ware fo mad as to deny to fay, "God fave the King:" 3 would have done it, but by the peftilent fociety of the fourth ware obdured; fo all the 4 ware sentenced, and hanged that fame day in the Gallow-lee, betuen 4 and 5 in the afternoon. The fuddenneffe, and remoteneffe of the place, hinders the multitude to flock to ther execution, as they ufed to doe.

No. 368,
p. 116.

10 *Decembris* 1684.—Corehouse, James Young, and the other Clidif-

dale gentlemen, (*de quo supra pag.* 114,) give in a petition to the Secret Committee, craving licence to transport themselves and ther families to this plantation of East New-Jersey, and to allow them some competent tyme for so great a journey. The Lords thought it reafoneable; but the Hy-Treasurer stopt it, in regard his Majesty might get 10,000 lb. sterling by ther fynes, for ther bygane delinquences, and then could dispose upon ther bodies, by sending them to the plantations thereafter.

11 Decembris 1684.—Sir John Dalrymple is liberat out of Prifon, (*vide* Ib. § 2. *supra pag.* 93,) upon my Lord Lauderdale, and my Lord Creighton's becoming caution to present him whenever called for, under the payne of 5000 lb. sterling.

Eodem die.—At Privy Counsell, my Lord Bargany being perswaded No. 370, before the Comisars of Edinburgh, by Sophia Johnston, for adhærence, p. 116. having got hir with child under promise of marriage; and the Comisars having found the promise probable by witnesses, he advocated the cause to the Lords upon iniquity, alledging such promises ware only probable *scripto vel juramento*; yet both by the canon and civill law, *matrimonium per testes probari potest*; yea even *per præsumptiones et conjecturas*: as *annuli subarrhatio aliave munera sive pignora, mutuus tractatus seu cohabitatio, confessio conjugij, fama viciniæ, copula subsequens, traductio in domum viri, &c.*, all which see at great lenth in *Mascardus de Probationibus voce Matrimonium*; throw many conclusions.

To counterballance this proces, my Lord Bargany raises a proceffe at Privy Counsell against hir, and one Andrew Bell, hir brother the drogists prentise, bearing that they had sent him a letter threatening to murder him if he did not marry hir; and that shee had been suborning witnesses to depone against him as to the promise of marriage, by putting them in the nixt rounge, and having one to personat my Lord Bargany with hir, and to make vows and solemne protestations that he would marry hir, and then caused some shew my Lord Bargany to thesse witnesses in the streit, that so they might be able to swear it. Shee denyed the lybell; but craved a list of the witnesses, in regard shee

had not got in ther names, that thee might try anent ther quality and integrity. It was alledged for Bargany, 1^o Tho' in the Criminall Court the witneses names are given in in list, yet it is not so at Privy Counsell. 2^{do}. He had just reason to conceall them, that thee might not tamper with them, nor debauch them. The Lords allowed hir 24 howers to expiscat what objections thee had against the witneses, and named a committee to examine them. At the bar, thee was much transported with passion against my Lord, calling him a false villain.

No. 371,
p. 116.

Eodem die.—At Privy Counsell, a bill is given in by some of the fouldiers, whom Collonell Douglass had turned out of his regiment, complaining that he had taken the arrears of ther pay, and cloathed and shoed some of the rest of the sojors therwith. Claverhouse ouned this bill; and said, It would discouradge any to enter in his Majesties service, if they ware used thus. The Hy-Treasurer resented this; and said, "None would doubt but his Brother knew his duety, and they had gotten coats at ther entry for nothing, and so should pay them." Thus grew the difference betuen Claveris and the Treasurer.

2^{do}. Three Galloway indulged Ministers are brought in. The Chancellor proposed the 3 ordinar overtures to them, ather to enact themselves to perpetuall banishment out of the King's wholle dominions; (for they require this now, because some of them who ware only banished Scotland retired no farder then Berwick, or Northumberland.) Or 2^{do}., Perpetuall imprisonment. Or 3^{tio}., To oblige themselves (if they choised rather to stay in Scotland,) never to preach or exerce any part of ther ministeriall function heir: This last, one of them called Oliphant, for himselfe and the rest, altogether refused, alledging ther commission from ther Lord and Master, bound them to the contrare:—Woe to them if they preached not the Gospell! The Chancellor asked for ther Master and commission, (which looked od,) and said, "If they had it not from a Bischop then they had no valid call." This is Mr. Dodwell's opinion; and the Bischop of St. Asaph, in his late book anent our antiquities, is for this. But Oliphant smartly replied, He beleived the Arch-Bischop of St. Androis was not of that judgment; for Arch-Bischop Rosse had no

ordination but what he had got in the tyme of Presbytrie, and our Monks of Icolmkill ordained Bifchops; tho' Doctor Loyd, St. Afaph's Bifchop, deny this. But ther doctrine cuts of the wholle Gallican reformed Church, with many others. They ware remanded back to prifon.

12 *Decembris* 1684.—News came to the Privy Counfell, that the wild No. 372,
phanaticks had fallen in upon one Peirfon, minifter at Carffairne in p. 117.
Galloway, a great delater of them, and jealous in rebuking them in his
fermons, and killed him. They ridiculoufly keip mock-courts of juftice,
and cite any they judge ther inveterat enemies to them; and leads pro-
bation, and condemnes them, and thereafter murders them: And thus they
proceeded againft Nory, minifter at Dumferling; but he kept himfelfe
out of ther way.

Eodem tempore.—The Privy Counfell, by ther A&t, grants a voluntar No. 373,
contribution, to be gathered at all the Churches on this fyde of Forth, p. 117.
to make a hy-way throw Lochor moffe, as we goe to Dumfries, which
will hold in travellers on that road 8 or 10 miles of way, which in Winter
they are forced to go about, becaufe of this moffe.

16 *Decembris* 1684.—At Privy Counfell the Earle of Kintore, upon No. 378,
his Majefty's gift, is advanced Treafurer-depute, in place of Lundy, p. 119.
advanced to be Secretary of State.

2^{do}. The Earle of Airly is reponed again to his troupe, on the death of
Urquhart of Meldrum, to whom it had been formerly given, by the late
Chancelor Aberdean's moyen.

27 *Decembris* 1684.—At Exchequer, a letter is produced from the No. 380,
King, (tho' of ane old date, viz., the 30 of September laft,) to them to p. 119.
call the Magiftrats of Edinburgh before them, and fignify, that, tho' by
his former letter, recommending Sir George Drummond to be Proveft,
he had required them to forbear any procedor againft Sir James Rocheid,
ther clerk, till the event of the count and reckoning; but now confidering
they are diftin&t things, he impowers the Magiftrats to convey Sir James

before them, and judge his malversations according to law and former practices; and to choose for the Clerks, sober persons who will not be factious nor meddle in elections; and to take the advice and opinion of the Hy-Treasurer therein. This, tho' it reserves to the Towne the outward formality of an election, yet, like the Bishop's *congee d'elire*, the persons the Chancellor and Treasurer appointed them to choose for the 2 Clerks, were John Drummond the Provost's son, and Mr. John Richardson the Hy-Treasurer's agent. Mr. Andrew Burnet advocat, was seeking to have got a share of this place. This letter was kept up so long, to see if Rocheid would either demit, or capitulate, and give a round summe of money.

2^{do}. On the 19 of December they deprived him; for the Towne Counsell of Edinburgh caused that morning wairn the said Sir James to wait on them in Counsell; they first read the King's letter above mentioned, then they rescinded an Act of Counsell he had caused make in 1675, appointing that the Clerk should not be deposed till first he got a double of his libell and accusation, and 8^t dayes tyme to answer it: Likeas in his new gift of the Clerkship, he had insert the like clause, that there should be a moneth betwene his citation and deprivation; and he founds much upon this quality of his gift to impugn his deprivation. Then they read sundry articles against him of malversation in his employment, as his rescinding the Act against Clerks meddling in the elections; bribing, tampering in elections; vitiating the Counsell Books, &c., whereof some were, (tho' many were not) instantly verified; and having called in the extraordinary deacons, they then voted what these delinquences merited; and so deposed him; and tho' at this tyme he, with some lawyers, Mr. William Fletcher, &c., was knocking at the door to have answered, or take instruments, yet they did not let him in. Then they proceeded and elected Provost Drummond's son, and Mr. John Richardson, to be the Clerks; and being at hand, they were both sworn, admitted, and installed.

This procedor likewise deprived James Hamilton, who had been elected conjunct Clerk on Sir James Rocheid's dimission; for it was alledged, That he could not validly demit, because he was then under process before the Exchequer on the Towne's count and reckoning for maladministration, and his dimitting was like a disposition given by a bankrupt *in*

meditatione fugæ, and like the Popish Clergy ther dilapidations of the benefices at the tyme of the Reformation, because they saw they could not keip them long; and the King's letter in September 1683, declared he would not allow Sir James to take in a conjunct *pendente lite*, (*vide supra* of James Hamilton's declarator, the [14] day of Februar 1684,) for James had a legall gift of admiffion from the Toune Counsell of Edinburgh; and thir preparatives tend to make all offices arbitrary; and the last letter does appoint them to judge the said Sir James according to law, and the practise of the Royall Burrows. But they alledged Sir Andrew Ramsay practised this summar method in deposing Sir William Thomfone; and that masters neid not use all formalities in removing ther servants; but ther gifts are *ad vitam et culpam*, and Sir William was present and acknowledged a fault. (See his case in Stair's Decisions, 14 February 1665, pages 269 and 278; item, in my folio law Manuscript A, folio 5; item, at the 20 of Februar 1665, folio 53.)

Against fundry of thir malversations Sir James Rocheid cloathed himselfe with the Act of Indemnity in 1679, thesse alledged crymes being prior theirt; but this was repelled in the Mint case against Halton, 20 Januarij 1683. Some advised Sir James to raise ane action for dammage and intrest, against all that voted for his deprivation, (which was the wholle Toune Counsell unanimously,) and to serve ane inhibition theiron against them, and to let it ly till he got a change in Court. Many thought, albeit the manner was illegall, yet by Adonibezeck's rule, he was justly served, for many had he fraudulently deceaved, and undermined in his tyme; and by letters from the King in 1675, he had got 12 of the best burgessees declared incapable; and now a letter is that which layes himselfe aside: "So long runs the fox as he feet hes:" *Quod quisque juris in alium statuerit ut ipse eodem utatur*. See Sir James Rocheid reponed, (*infra* pag. 234.)

18 Decembris 1684.—In the Lady Weyms and Applecrosse's cause, (of No. 384, which see *supra* 3 Decembris,) the Chancellor openly rebuked Aplecrosse^{p. 120.} at the bar, that his agent had given his servant a dollar, to convey the Information to him, and that he would not allow his servants to take any money from the people; and tho' the King's Advocat excused it, by term-

ing it a common practise, yet he declared he would not suffer it. The President and the Lords were silent; and some of them appeared not to be much of the Chancellor's opinion.

No. 385,
p. 121.

19 Decembris 1684.—The Dutcheffe of Lauderdale's affair against the Earle of Lauderdale, was advised. The Earle, and the Lord Maitland his son, in the Duke of Lauderdale's lifetyme, signed a ratification of the rights of Leidington, Dudiston, &c., disposed by him to his Dutcheffe: They being charged on this ratification suspend, that it was but a conditionall obliishment, and a *synallagma* granted for a cause which had not existed, and so was null *per condictionem chirographi ob causam datam causa non secuta*, in so far as the ratification was given in contemplation, and *intuitu* of the tailzie and succession to the Duke, (as appears from its narrative,) and the tailzie was the *causa finalis et procatactica* of the ratification. But *ita est*, he nather had succeeded nor could, there being an expired comprising of the Duke's estate, led by Anderson of Hill in 1655, unpaid, which was a *medius obex et impedimentum*, debarring him from the succession. . . . The Lords before answer ordained the said comprising to be produced.

2^{do}. But Lauderdale being dissatisfied with this, and pressing to have a decision *in jure*, on the relevancy of his alledgeance; the Lords, on the 23 of December, reassumed the advising the defence, and found the reason of suspension relevant to elide the ratification, viz., that there was an expired comprising against the Duke of Lauderdale unpaid at the tyme of their subscribing that ratification, which would evacuate and carry away the estate from the airs of tailzie, so that they cannot enter; and found the ratification implied a condition, in case they did and could succeed; unless the Dutcheffe offer to prove, by the Earle's oath or writ, that he knew of that comprising standing out unsatisfied at the tyme of his signing that ratification, and assigne the 1 of Februar to him to prove, and grants him an incident diligence for recovery of the said comprising.

My Lord Lauderdale gave in a declinator against Harcous, upon this ground, that he had formed and drawn the whole securities and writs granted by the Duke to his Dutcheffe, and so had given partiall counsell,

and would judge himfelfe concerned to maintain his ounē deeds. He defired theſſe of the Lords that had not done the like to throw the firſt ſtone at him; and that Newton now Prefident, was not declined as a judge in Calander and Dumfermeling's cauſe in 1676, tho' objected againſt that he had been Dumferling's Advocat in the cauſe. But thir 2 differs, for ane Advocat may give counſell, but a Lord of Seſſion ſhould not. Yet the Lords ſuſtained not the declinator, but allowed him to fit and vote with them, in regard he deponed, he was intruſted and imployed by both parties to draw theſſe writs, at leiſt by my Lord Maitland. Pitmedden argued, To cauſe the Earle ratify, when he could not ſucceid, was to give him ſtones inſtead of bread, and a ſcorpion inſtead of a fiſch, as in the 6th Mathew; and that ſuch donations to wives ought not to be encouradged; for that expoſed old men, deficient in due benevolence, to be ther wives pray; and Lauderdale is loathe to be reproached, that his family is extinguished and killed by the hand of a woman, as was Abimelech's caſe, Judges, cap. 9, verſe 54: this ware to ſet up the *Γυναικοκρατία*.

20 Decembris 1684.—Hew Wallace caſh-keiper, and the Biſhop of No. 386,
Dumblaine, competing with the miniſters and pariſhoners of Creiff, about p. 122.
the rents of a prebandry which once belonged to the Biſhoprick of Dumblaine, and was ſuppreſt and annexed to make a part of the miniſter of Creiff's ſtipend; the Biſhop alledged, it was never legally ſuppreſt, and the demiffion of the Prebander was but done in 1643, when Epiſcopacy was abolithed. The miniſter of Creiff ſaid, he had the benefit of a poſſeſſory judgement, and could not be quarrelled *hoc loco*. The Lords ſand he had not *decennalis et triennalis poſſeſſio*, becauſe the Biſhop had interrupted him within the 13 years; and therfor præferred the Biſhop.

Eodem die.—Letters came from Collonell Grame of Claverhouſe, then No. 387,
in Galloway, that he had met with a party of theſſe rogues who had p. 122.
ſculked in the mountains, (if ther retiring holes could be got, they are ſo cowardly they may be eaſily routed,) he had followed them, killed 5, and tane 3 priſoners, ſome of which ware of the murderers of the miniſter of Carſſairne, (*de quo ſupra pag. 117;*) and that he was to judge and

execute the 3 prisoners, by his Justiciary power; and if his garrisons ware once placed, he hoped to secure and quiet that country.

2^{do}. One Seton, a trouper, being in drink, and wanting his pay to satisfy for his horse and himselfe, rashly said in company, it ware better for him to goe serve the Whigs then to be used in this manner; which, being proved, he was sentenced to be shot to death in Leith Links this day; but on the intercession of the Dutchesse of Gordon, and the Earle of Winton, he was pardoned his life.

No. 390, 23 Decembris 1684.—At Privy Counsell, a petition was presented by
p. 122. Robert Barclay, for the proprietars and planters in Eist New-Jersey, desiring that such of the phanatiques as they thought fitt to banish, or who finding themselves uneasy at home, ather from ther poverty or principles, ware willing to remove, might be delivered to them, they standing much in neid of tradesmen, and labourers of the ground. The Chancelor and Register ware for it; but the Treasurer stopped it, (being no freind to thesse plantations,) till they should consult the King's pleasure anent it.

No. 391, *Eodem tempore*.—This being the day appointed by the proclamation
p. 123. of the Parliament to choise Commissioners wheir they wanted; the Toune Counsell of Edinburgh being informed by Sir G. Lockhart, that ther was no hazard in making a new election, tho' they had standing Commissioners, viz., Sir James Dick and William Borthwick chirurgian, who was elected in place of Deacon Cleghorne goldsmith, deceased, *medio tempore*. And tho it hes been the practise, that he who is choisen for a brugh in the beginning of a Parliament, continues during the wholle sessions and currency of that Parliament; as Sir Robert Moray did in Midleton and Rothesse's 2^d and 3^d sessions of Parliament in 1663, tho' he went of from being Proveft at Michaelmasse 1662, and Sir Andrew Ramfay was then Proveft. Therfor the Toune Counsell of Edinburgh was resolving to elect Sir George Drummond ther present Proveft, and William Watson cordiner Deacon-conveener, to be ther 2 Commissioners in this nixt session of Parliament: the pretences ware, 1^o That Sir James

Dick was found, in August 1682, at Privy Counsell, guilty of offering bribes to Halton, and so was unfitt. 2^{do}. Sir James cannot fitt in the Convention of Burrows, but only the present Proveft; and it is unreaſonable that he ſhould repreſent them in Parliament, who cannot be preſent at the Convention of Burrows, wher the Burrows, as a 3^d Eſtate, have power to meet during the fitting of the Parliament, to confider and prepare overtures and propoſealls for the advantage of ther ſtate and trade.

23 & 24 *Decembris* 1684, are the tryall, condemnation, and execution of No. 392, Mr. Robert Bailzie of Jerveſwood.—23th. *poſt meridiem*, He was brought to ^{p. 123.} the Criminall Court, and pannelled as airt and part of the treaſoneable conspiracy of joyning with the diſcontented country party in England, viz., Shaftſberry, Lord Ruſſell, &c., to perſuade or force the King to redreſſe ther grievances, call a Parliament, and paſſe the bill of ſeclution againſt the Duke of York, for ſecuring the Proteſtant religion; and carrieng on this rebellious deſigne of riſing with England, under the blind and pretence of the Carolina Company, and for his knowledge and acceſſion theirt, and yet he preſumed to conceall, and not reveall the ſame: As alſo, he was ane agent for getting the 10,000 lb. ſterling from the Engliſh, to my Lord Argile in Holland, to buy armes, and to raiſe dragouns and horſes, to land in the Weſt Hylands, wher others ware to joyne with him: *Vid. ſupra* of Spence and Carſtairs's declarations, pag. 90.

The King's Advocat firſt produced the Privy Counſell's warrant to him to perſhue him; which alſo commanded Sir George Lockhart and me, upon our alledgeances, to be aſſiſtant to him in that proceſſe. Then ther warrant was produced for Sir Patrick Hume, Mrs. Walter Pringle, and William Fletcher, to appear for the pannell, (tho' the 38 Act of Parliament in 1587, is warrant eneugh,) they alwayes containing themſelves within the bounds of law and loyalty; at which claufe they ſcrupled, as unuſuall; tho' they declared they would exceid nather.

The 1st defence was on the ſhortneſſe of the citation, that he got it upon litle more then 24 howers citation, and that the legal *induciae* was 15 dayes; as, after debate, was found in 1673 by the Juſtices, in the caſe of one Robertſone, tho' he was in priſon, remarked by Sir George Mac-

Keinzie, his Majestie's Advocat himselfe, in his Criminall Treatise title of Libells, paragraph 5^t, pag. 472 ; at leift, fuch a competent tyme ought to be allowed, in which the pannell may raife a præcept of exculpation, conforme to the regulations in 1672, to prove his defences of *alibi*, or the like, and to cite witneffes ; which was impossible in this cafe ; and if on a day they may be cited, why not on ane hower ? Answered, Ther was no law oblidging to give pannells in prifon any definite tyme, especially wher it was not on a fummons of treason, but only on ane indytment ; and that our custome and praëtique had allowed citations on 24 howers ; and Rathillet and others had bein fo cited, (only it was not objected againft in theffe cafes,) and heir the pannell had not applyed for ane exculpation. The Criminall Lords repelled the defence, and fustained the citation.

2^{do}. They alledged, As to that article of harbory, and refet of Mr. William Veitch, or other fugitives, and the corresponding with Argile, it was *res hæcenus judicata*, in fo far as he, having been conveyened before the Privy Counfell in September laft for theffe crymes, and the fame being referred to his oath ; and he refusing to depone, he was fyned in 6000 lb. fterling. Answered, They reftricted to the crymes not infifted for, in that decreit of Counfell. Replyed, By a fcroll under the Clerk of Secret Counfell's fervant's hand, he was alfo then interrogate about Argile's affair ; and they craved the King's Advocat's oath theron. Duplyed, The decreit of Secret Counfell contained no fuch thing ; and it being a foverain Court, it fhould make more faith then any double ; and the Advocat could not depone in prejudice of his Majestie's intereft. The Lords allowed the King's Advocat to infift againft the pannell for all crymes not judged by the faid decreit, and refused to convell it by his oath. Then they having no more to fay againft the relevancy of the ditty, the Juftices fand it relevant to infer the pain of treason. Yet there ware 2 other defences privately fuggested : 1^o. That the King's warrand fend- ing him doune from London, boor only to try him for crymes done in Scotland ; *ergo*, what he plotted in England fhould not be charged on him heir. 2^{do}. That in England, the fending money to Argile was not treason ; *ergo*, the concealling it by a Scotsman could not be treason,

feing *accessorium sequitur suum principale, et non entis nulla sunt accidentia*. (But they ware not clear to medle with thir 2.) And ther is a strict A&t of Parliament in England, since his Majestie's restoration in 166 years, that no man who has committed a cryme in England shall be sent prisoner for it to another kingdom, (but I think this A&t means native or naturalized English, now the Scotch *postnati* are such;) for in another country, they cannot plead the benefit of ther *habeas corpus*; and for this reason it seems they could not prevaill with Sheepheard, and the other English witnesses, to come to Scotland and depone against Jeref-wood what they knew of his accession.

Then the witnesses ware called, and Walter Scot Earle of Tarras, the pannell's nevoy by his Lady, was first brought in; against whom it was objected, that he was not a habile witness in law, being not only *consciens et socius criminis*, but also under proces of treason, and also under the fear and apprehension of his life, and so *sub potestate accusatoris*; and, which was more, he was *convictus*, in so far as he had confessed his guilt, and throwen himselfe on the King's mercy, *et confessus habetur pro convicto*; and such a witness was rejected by all laws, even in treason. As the famous Antonius Matthæus asserts, *Tit. de læsa Majestate cap. 4^{to} pag. 37 et seqq.*, and P. Farinacius *de testibus quæst. 53*, (yet see him *quæst. 47*,) declares, *testem accusatum et incarceratum* to be incapable; and the 34 chapter of the *Statuta 2^{da} Roberti 1, de his qui repelluntur a testimonio* expressly *incapacitatis vinculum infamem et carceratum*, and whose accusation is yet depending. Answered, that tho' the brocard *regulariter* holds true, that *socij consocijque criminis non sunt admittendi in testes quia inhabiles*, yet *exceptionem et deliquium patitur in criminibus privilegiatis et exceptis*, as is treason, and conspiracies for subverting the government, which cannot be otherwayes proven but by accomplices; and to plead that they are not receaveable witnesses is all one as to plead, that such plots shall not be discovered at all; and if *particeps criminis* be not allowed they cannot show a way how to reach such conjurators, and publick utility hes introduced this relaxation, both for the atrocity, frequency, and extent of the cryme, and all lawyers are clear of this, that it may be proven *per socios; et confessus habetur pro convicto*, only *fictione juris*. See

Muscardus de probationibus volum. 1, voce crimen læsæ majestatis, conclus. 463 et 467, num. 23 et seqq. Papon in his Arrests and Decisions, *libro 24, titulo 8, de preuves seu de probationibus, num. 5^{to} pag. 1325*, shows sundry cases wheirin complices make a full probation, viz., in læse majesty, and conspiracies. And Antonius Faber, in *Codice, libro 9, tit. 6, ad legem Juliam majestatis, definit. 4*, says, it's *privilegium criminis læsæ majestatis ut facilius probetur*, and that for obviating and discovering it, *etiam socij criminis sunt testes habiles*, which, tho' he confesses to be hard, yet it is necessar. See the Advocat's oun Criminalls, title of treason, *pag. 52, et seq.*; and it imports not in law whither he be under proces or no, for it still amounts to no more but his being a *socius*, and his fear of death is much the same before his indytment as after. The Criminall Lords repelled the objection, and admitted Tarras.

Then Comisar Monro being adduced, it was alledged against him, he had betrayed his testimony already, by discovering what he could say against the pannell. 2^{do}. When he emitted that declaration, he was ather threatned with torture, or in the very prospect and view of it; and Damhouderius and other criminalists reprobats that testimony. 3^{tio}. That he had got promise of the greatest good deed, viz., his life. Answered, Any declaration he hath emitted is not prodiction; being to a judge, and it was not in a præcognition, nor in relation to this pannell, and so neids nather be given back nor cancelled. 2^{do}. It's denyed, he was threatned with the torture; but tho' he had, he is so far from being rendered theirby inhabile, that, on the contrare he is a more pregnant and convincing witnesse, not being voluntar. 3^{tio}. Promise of a remission *non relevat*, unlesse it was burdened with, and commoned on, that he should for that cause depone against the pannell. The Lords also receaved him.

Then James Murray of Philiphaugh, and Hugh Scot of Gallowsheills, ware examined; who said litle to the pannell's case in particular; but cleared the tract and threid of the conspiracy, and the meittings with Polwart and Mr. Robert Martin, at Pringle of Torwoodleye's house, and the chain by which it was linked with the English plotters and Scotsmen at London, viz., the Lord Melvill, Sir John Cochrane, the 2 Cefnocks, Comisar Monro, Jerefwood, &c. Ther designe seems to have been, to

joyne with the English when they ware ripe to draw to a body, and, with armes in the one hand, and a petition in the other, to compell the King to quite his Brother to the mercy of a tryall in Parliament, and to receave them to be his counsellors; and ambition had so blinded their eyes, that they had promised successe to themselves, and ware dividing the offices of State among them, and talked of seizing Berwick, and Stirling Castle, and of surprizing the Chancellor, Treasurer, and the dragoun's horses wher they ware grazing; and to try whare ther ware any armes to be got; and to let the project fall to their confident freinds, to try their inclinations, and to keep up their cesse for a tyme; and to know the strength of their party by a word, viz., "Harmony," and a signe, viz., the lousing a button of their breast, and then closing it again.

After this the King's Advocat farther adduced to the Assise, *in modum probationis*, a printed double of Mr. William Carstairs deposition, owned and adhered to by him on the 22 of December last, in presence of the whole Privy Counsell; wheron the 2 Clerks of Counsell ware adduced as witnesses, to supply his absence; for he scrupled to appear as witness against his freinds, whom he had insnared in the plot, and he had capitulat with the Secret Committee, before he would reveall any thing; 1^o To secure his life. 2^{do} That he should not be made use of as a witness. As also the King's Advocat produced 2 depositions, tane before the Privy Counsell of England, of Sheipheard the vintner, and Zacharie Burnes the brewar, anent the pannell's treating for the 10,000 lb. sterling [which] was to have been sent over to the late Argyle, with Sir Lionell Jenkins, then Secretar, his subscription and attestation theirat; and for proving the verity of the subscriptions, ther was produced Sir Andrew Foster our Secretarie's servant's letter, which he sent alongs with thesse depositions, and fundry other letters and papers of Secretary Jenkins, for comparing the hand-writ. Alledged against this, That by the common law, l. 3, § 3 et 4, *D. de testibus*, its clear that *non testimoniis sed testibus tantum est credendum; et Novella 90, cap. 5*; in civill cases the Emperor allows the examination of absent witnesses upon commissions; but in *criminalibus*, because of their great import, *omnino præsentari debent testes coram judice et reo*; and our law is as positive, in the 98 A^t Parliament

xi. James 6^t, 1587, that all probation moſt be led in preſence of the Affiſe and pannell, (tho' the King's Advocat answered, he did ſo by adducing his written depoſition to them,) who by confrontation may have great power to keip the witneſſes from perjury; wherof we ſaw a ſignall evidence on the 24 and 27 of March, (*ſupra* 1684, pag. 67,) in Ceſnock's tryall; for tho' Crawford and Ingram, the 2 witneſſes, had clearly deponed againſt him at ſeveral tymes before the tryall, yet when they came in his preſence, they refuſed. Answered, It was notterly known, that Carſtairs and the other 2 abſent Engliſh witneſſes had deponed theſe things, and did adhære therto, and had no intereſt to ly or wrong the pannell; and ſo it imported not whither they ware preſent or abſent; but they uſed them only to informe the minds and conſciences of the Affiſers, and left it to them to conſider how far they ſhould import; and the 90 Act of Parliament cited made againſt them; for it only diſcharged the ſchuſſing in of papers to the affiſers after ther incloſure, which the pannell had not ſeen, and therfor ordained all the probation to be led in preſence of the pannell and the affiſe; which they now did, by adducing theſe teſtimonies before the pannell and affiſe, (this gloſſe was judged by ſome forced,) and a double of which papers ware given him in with his indytement. The Criminall Lords reſuſed to ſuſtain them as a full probation *per ſe*, (for that ware a very dangerous preparative, and we know not wher it might land in the ſubverſion of our fundamentalls,) but referred them to the Affiſe to be conſidered by them *in modum adminiculi*.

Then Sir Patrick Home, one of the pannell's advocats, ſpoke to the Affiſe, and alledged ther was not 2 witneſſes aggriong in one fact. The Advocat in his ſpeech, 1^o contended, that neaded not in treaſon. 2^{do}. He ſummed up the probation, (it being his priviledge to be the laſt ſpeaker in this cryme of treaſon,) and aggravated it in all its circumſtances. The Affiſe incloſed neir about 12 at night, and ſate till 3 in the morning, and the Earle of Strathmoir being Chancellor; his verdi&t fand his being art and part of the conſpiracy and deſigne to riſe in armes, and his concealing the ſame, proven by the writs and adminicles produced.

The verdi&t was read the nixt morning, the 24 of December, and ſentence pronounced then againſt him, viz., That he ſhould be taken

that afternoon to the mercat-crosse of Edinburgh, and ther be hanged on a gibbet till he be dead ; and then his head to be cut of, and affixed on the Netherbow port of Edinburgh, and his body to be cut in 4 quarters, to be set on the Tolbuiths of Jedburgh, Lanrick, Air, and Glasgou ; his lands and moveables declared forfeited to the King, his blood tainted, his posterity declared ignoble, and incapable of all offices ; his armes reversed, and so affixed on the crosse, and not only torne ther but also delet and razed out of all the books of Herauldrie : he boor for his armes, the sun and 8 stars. His father was a son of the Laird of St. John's Kirk, who is a cadet of Laminton, who say they are the old Balliolls. He carried all this with much calmenes and composure of mind ; only he complained the tyme they had given him to prepare himselfe for death was too short, and huffed a litle that he should be esteemed guilty of any designe against the life of the King, or his Brother, of which he purged himselfe, as he hoped to find mercy ; as also, he denied any purpose of subverting the monarchicall government, only he had wished that some grievances in the administration of our affairs might be rectified and reformed. But seeing he purged not himselfe of the rest of his libell, his silence as to thesse looked like a tacit confession and acknowledgement theirow. All seemed convinced that he had tampered in dangerous propoalls, anent getting what was amisse redressed, by putting the King under force to yeild to ther demands, if they could not obtain it with fairnesse ; and Tarras declared, the pannell regrated that the English only talked, but he would study to push them forward to take brisker and sharper measures, and to act something, (tho' Jerefwode complained much, that Tarras to save himselfe sacrificed him, and that he never had thesse expressions,) and that in May 1683, he went to London on that errand ; tho' Jerefwode himselfe, and the other Scots gentlemen who then went up, gave this for the reason, that they ware so terrified with the interlocutor against Blaikwood, finding him guilty of treason for refet and harbory, they knowing themselves not free ; as who in the West were ? Tarras, Philiphaugh, &c., minced and extenuated ther designe by severall collours and palliations ; as 1^o That they detested the Republican party in England, who ware for totally changing the monarchy : but they were

content to have had him limited to have followed their counsells. 2^{do}. That Mr. Robert Martin was only sent doune to stop a rising in Scotland. But it appears the reason was, they had not yet fully concerted with England, and they feared to mar the designe by too much præcipation and haste; and yet, Mr. Robert when he returnes, he reports he found the country in such a temper, that very litle would kindle the fyre. 3^{tio}. That all they spoke was only on remote suppositions and cautions, and was immediately rejected as unfit, and more consonant to Popish Jesuiticall principles, then to the Casuists and Divines of the Reformed religion; but under such a dangerous pretended covert as this, all the treason of the world may be hatched and carried on.

The sentence was accordingly execute in the afternoon; so that ther was not above 5 howers betuen his sentence and his death, which was much complained of; but the holy dayes of Zuille approaching, they would not delay him till they ware ended; and ther reputation in discovering this Scots Plot was much concerned in the finding him guilty of it; for if that had miscarried, it would have made the people believe it was but a sham forged plot. His marrieng Johnstons of Waristons daughter first alienated his mind from the Governement; then he having rescued his brother-in-law Mr. James Kirton, ane outlawed Minister, from Captain Carstairs, by drawing his sword, he was fyned in 1000 lb. sterling, and imprisoned for it; but he got his fyne remitted. The beginning of discontent, tho' small, yet, if cherished, will transcend all bounds, and keip no measure. He dyed regrated by many, and with much resolution; yet it was remembered, tho' he was a huffy proud man, yet the Lord Cranston, being jealous of him with his Lady, hectored and battoned him. The Lady Graden, a daughter of Waristons, and his sister-in-law, with a more then masculine courage, staid on the scaffold till all his body was cut in coupons, and went with the hangman to see them oyled and tarred.

What Carstairs and the rest have said, is but ane imperfect narrative of this Plot; for they have concealed many circumstances of it, and told no more then what was squeezed out of them by speciall interrogators, torture, and fear of more; but sober persons doe not doubt but thesse

foolish rash thoughts of winding themselves into the Governement was in ther heads, tho' a thing very impracticable. Ther ware some doubles of a speach he had framed and written, spred after his death, with the matter wheirof our Statfmen ware very displeased, and ware willing to have given his lady his 4 quarters to bury, if shee could suppress and bring in all the copies of it, that it might not flee abroad; but others thought this was the hy-way to set curiosity on edge, to searh for it and so propale it. But the reputation of our Governors lay deiply at the stake, in the convincing the world of the truth and reality of this plot discovered by them; so they ware hudgey concerned to obviat any thing that seimed in the leift to infringe, invalidat, or take of the credibility of that Plot in the minds of the peeple. (See the copies of his speach beside me.)

This is now the lesse necessary, that, by order, his Tryall is since printed, with the key of the Plot, and ane account of the late Discoveries and decifrings made in Scotland of the conspiracy against the King, compiled by Tarbet Clerk Register: But this abbreviat of his tryall was written by me before the Tryall was given in to the presse.

Eodem 24 Decembris 1684.—Tho' this day immediatly preceeded No. 393,
Christmas, yet the Lords fate. p. 128.

Eodem die, post meridiem.—After Jerefwod's execution, the Privy No. 394,
Counsell meits, and convey 11 of the Clidisdale gentlemen before them, p. 128.
(of whom *supra* pag. 114,) viz., Bannatyne of Corehouse, Stewart of Allanton, and Stuart of Walwood his brother, Kennedy of Cloeburn, Hamilton of Halcraig, Hamilton of Overton, James Young of Linbank, Chamberlayn of Evandaill, &c. Ther libell was, ther accession to Pentland-Hill, or Bothuell-Bridge rebellions, or ther resetting such as was ther, or contributing money for Rebels, or harboring Non-conformist Ministers, who preached or prayed in ther houses; or sending money to Argile, or refusing to take the oaths of alledgeance and supremacy, &c. The King's Advocat having declared, he restricted the libell to ane arbitrary punishment, he referred it to ther oaths; wheron they having deponed, and refused the King's ecclesiastick supremacy, they ware fyned, two of

them in 12,000 mks., James Young in 10,000 mks., Overton in 9000 mks., and some of them in 5000, and others in 3000, and tuo of them sent to the Plantations in the Indyas, besydes ther fyne; and all of them to ly in prisson till they pay them. Ther wholle fynes imposed this afternoon extended neir to fourscore thousand merks.

THE ZUILLE, OR CHRISTMASSE VACANCE.

No. 395, 25 *Decembris* 1684.—In the Abbey Church of Halirud-houffe is performed, this day, the solemnity of translating Rosse, Arch-Bischop of Glasgow to St. Andrews; and Cairnecrosse, Bischop of Brichen, to Glasgaw; and one Doctor Drummond is consecrat Bischop of Brichen.

No. 396, 30 *Decembris* 1684.—A party of the forces having been sent out to apprehend Sir William Scot of Harden younger, because Tarras and Philiphaugh deponed, they communicated remotely ther designe to him, as a man of good fortune; and one William Scot in Langhope, by the cadgers or others, getting notice of ther coming, he went and acquainted Harden with it, as he was playing at the curling with Riddel of Hayning, and others; who instantly pretending ther ware some freinds at his house, left them, and so fled. Hayning having delated this, the said William Scot, and one James Scot of Thirlestan, old Harden's brother, are brought in this day to Edinburgh. Thirlstan is liberat, as finding nothing to say to him; but William is put in the irons, because he declined to tell who gave him the advertishment of the parties coming.

No. 397, *Eodem die*.—Ther is a proclamation at the mercat-crosse of Edinburgh, ordaining ane oath to be tendred to all past 16 years of age, disclaming that Declaration of War, (*de quo supra* 13 *Novembris* 1684,) and the affaffinating principles of the lawfulnessse of the murdering the King's fouldiers; and theron to have a passe and certificat, else to be repute as favourers of them. See the printed proclamation.

ANNUS 1685.

Primo Januarij 1685.—The Lords of Seffion being informed that John Inglis, late Advocat, was printing the rest of that proces about the 2 prize ships called the Patience and Palm-tree, (see a large printed book of them beside me, as also *supra* pag. 98,) and that ther ware reflections on the Lords in it; they called him and the whole Advocats in, and intimated to them, That they would not suffer proceffes or interlocutors to be printed without ther warrand; tho' some argued, if they be just, why are they ashamed of the light, if otherwayes, then this will make the Lords more cautious and wary, and abroad they print all such papers. (See the Manuscript E, the [10] day of [Februar] 1682, whar the printing of the Informations was a while allowed.) But some of the Lords pretended it would deprive many young men of a part of ther livelyhood by writing informations, but we all know how imperfytly they copie them, and it would make them drawen more polite and accurate.

2^{do}. The Lords ware also this tyme hammering at an Act of Sederunt, that Advocats should signe ther informations to the Lords, at leift thesse 2, the one to the Chancelor and the other to the President, to curb all reflections and arrogant expressions. Sir G. Lockhart said he would not refuse it, but he thought the Lords, by the same rule, should signe ther interlocutors, as they did in the English tyme, this would make the Lords more legall, and cause Advocats study more exactnes, and not to put in calumnious or irrelevant alledgeances in ther informations.

5 & 6 *Januarij* 1685.—[At the Criminal Court,] the Earle of Tarras is pannelled, as art and part of that conspiracy, (wheirof *supra* in Jereswood's proces, 23 & 24 *Decembris* 1684.) Beside Tarras his oun judicial confession to the Affise, they leid also Philiphaugh and Gallowsheills witnesses against him, leift it might be objected heirafter by the Whigs, that the thing confessed by him was not really true, but impetrat by collusion, to gain his life. He is forfault, and his armes torne; but the tyme, place, and manner of his execution is referred to the King; because

they designe to obtain him a remission for life, as they have done to Comisar Monro, Spence, Carstairs, Philiphaugh, and Gallowtheills.

No. 402, 7 *Januarij* 1685.—Mr. John Mackeinzie advocat, Coull's brother,
p. 130. having married one Lenton, a neice of Bailzie Spence's, without his consent, he, as being a magistrat of Edinburgh, summarly caused imprison the woman in whose house Mr. John had his chamber, for harboring them. This being represented to the Privy Counsell, they fand the imprisonment arbitrary and illegall, and set the woman at liberty.

No. 403, *Eodem die*.—At Privy Counsell, *post meridiem*, a bill was given in by
p. 130. the Colledge of Physitians in Edinburgh, craving that they would ather allow them to name a visitor for viewing the Apothecarie's drogs, if they be wholsome, one of the magistrats being present with them; or else the Privy Counsell to appoint one themselves. (See of this *supra* 18 *Martij* 1684.) For the Physitians represented, that they war blamed when the patients dyed, and yet the fault was oftymes in the unskilfulness of the Apothecary compounder, (ther aime was against the Chirurgical Apothecaries,) or in the rottenness of his drogs. Abotshall opposed this, and represented, that if the Apothecaries faults and extortion deserved regulation, it was as just the Physitians should be regulate also, as they ware in Holland and France, wher they had *quart d'ecu* for each visit. The affair was committed to the Register and Abotshall; but the Register said, in complaining of drugs they had great reason to notice ane universall abuse in the brewars of ale by ther poisoning it with salt, to make it tastie, which spoiled and infected our blood. This was also referred and committed. It was also represented, that they rubbed ther barrels with the seeds of coriander, &c., which gave the ale a strong tast, and served instead of malt, and so might be sold cheaper, and was likeways unwholsome.

No. 405, 9 *Januarij* 1685.—The Bischop of Edinburgh pershues William Hay,
p. 130. Comisar Clerk, for deprivation, on fundry grosse malversations. This proces being reported by Pitmedden, it was casten on this dilator, That ther was but 5 free dayes in the 2^d citation, tho' the Bischop alledged, 24

howers by our custome was sufficient for the 2^d citation within the toune of Edinburgh, wher the defender dwelt ; within thesse few years when the Bishop was in power, this dilator against him would not have been regarded. . . . The Bishop's designe was, if he could not force him to give a new composition, then to see if he could remove him, and put in his brother, Mr. Robert Paterfon, in the place.

Eodem die.—Five protections from the King, (this elides the A& of No. 406, p. 131. Parliament in 1681 against them,) are presented, allowed, and passed the Great Seall, conforme to the late A& of Privy Counsell ; each of them stands 18 l^b. sterling at Court. They were said to be to Sir George Drumond, Provest of Edinburgh, George Drummond, Toune-treasurer ther, (this was verie unusuall that such Magistrats should neid them ; see *infra* [21] August, Provest Drumond breaks ;) to Samuel Drummond younger of Carloury, (the Chancelor procured all thir ;) to Skeen of Halyeards in Louthian, and to Bailzie John Johnston of Polton.

10 *Januarij* 1685.—William Seaton, one of the King's guard, gives No. 407, p. 131. in a bill to the Lords of Session, as commissiioners of Argile's forfaultor, against Sir Ewin Camron of Lochyell, bearing, that wher Sir Ewin being creditor to Argile in 5000 m^ks., he had discovered to them, that he was likewayes debtor to the said late Earle in a greater summe then that 5000 m^ks. came to ; and, as a reward of his discovery, he had got ane A& of the Lords, empowering him to retain and pay himfelfe of the said 5000 m^ks. in his oune hands, but the Lords gave William Seton the pursuuar, another creditor of Argile's in 6000 m^ks., a right to the superplus of what Lochyell owed Argile more then payed himfelfe for his locality ; and yet Lochiell was now shifting and refusing to declare what more he was owing then the summe allocate to himfelfe, and was going out of the kingdome to New Jerfey, and disponing his estate to his sone, and so would defraud the said William ; and therfor he craved, that he might be cited to depone in what more he was debtor then payed himfelfe, or else to be holden as confest. The Lords summarly granted the desire of the bill, and ordained one of ther maijsters to cite him to compeir before them

as commissioners and depone. Lochyell gave in a counter-bill, alledging he could not be so conveyed *hoc ordine*, but *vice ordinaria* by a summons.

No. 408,
p. 131.

12, 13, & 16 *Januarij* 1685.—Thesfe fugitive rebels who ware abroad, ware on thir dayes summoned to compeir at the Parliament, on the 26 of March nixt, on a proceffe of treason raifed againft them, to the number of 22, viz., James Campbell Earle of Loudon, George Lord Melvill, Sir John Cochran of Ochiltry, Sir Hew and Sir George Campbells of Cefnock, John Weir of Newton, David Montgomrie of Lainshaw, Sir James Dalrymple of Stair, Thomas Stewart of Coltnesse, William Denholme of Westsheills, James Stewart advocat, Sir Patrick Home of Polwart, George Pringle of Torwoodley, Mr. Robert Martin, John Hay of Park, Andrew Fletcher of Salton, Mr. Gilbert Elliot wryter in Edinburgh, Mr. Robert Fergusson chaipain to the Earle of Shaftsberry, Colin Campbell of Ardkinlas, George Home of Bassinden, and Walter Lockhart of Kirkton. They ware all cited by a speciall warrand from his Majesty, who also superscryved the list of ther names. They ware all fugitives but Park Hay, Newton Weir, the 2 Cefnocks, and Ardkinlas, who ware in custodie and prisons. Ther citation was at the mercat-crosse of Edinburgh, pear and shoar of Leith, on 60 dayes, as being out of the kingdome. Ther was seven of them who ware not already denounced fugitives, ware cited to compear on a shorter day, for the same crymes, before the Justice Court; that so they may be denounced before the Parliament meit, to convince them they intent not to appear, and that at leift they may get ther liferent escheat; (but they relaxed them *ad effectum standi in judicio* allenarly.) The citation to the Parliament is directed by order of the King and his Counsell, and in Latin, under the Quarter Seall, which is the testimoniall of the Great Seall, and this is alledged to be the old way of citing absent delinquents to Parliaments, tho' the Parliament was not fitting, because if the Parliament isshued out thesse warrands and orders, they behooved to sit idle 60 dayes ere they could proceid; tho' others contended that citations could not be decerned to appear in Parliament by any meaner authority then of the Parliament itselfe, or the Articles, yet of old, when our Parliaments sat so short while,

the custome was contrary. . . . Forfaultors have been reduced on lesse informalities (wher parties have found themselves weill stated) then this, that the citation is issued out a *non suo iudice*; but the Parliament will ratify this. *Nota*, It was omitted to be fought.

13 *Januarij* 1685.—There is a letter from his Majesty to the Lords of No. 409, Session in favors of the Dutchesse of Lauderdale, against the Earle, p. 132. obtained by Lundie Secretary, and the Lord Guilford North, Chancellor of England; bearing, that he had considered ther interlocutor, and found it to be doune-right contrare to the Earle's oblishment and ratification; and commanding them to give him ane account of the same, and stop any farder procedor till he declare his pleasure. Tho' this seimed to be *mali exempli*, yet it was alledged to be the King's undoubted prærogative, to evocate any depending action to himselfe, and that he had this inhærent power before the late A& of his cumulative jurisdiction made in 1681; for it is a right inhærent in the Croun; and *Bodin de Republica, libro 1, cap. 8^{vo}, et ultimo, et Grotius de Jure belli et pacis, libro cap. §*, (tho' no great freind to Monarchy,) and Arnisæus in his *Systema Politicum*, and Befoldus in his *Synopsis Doctrinæ Politicæ, pag. 73 et 75*, says, *summum imperium non effiet summum*, unlesse they had power to cognosce on causes, tho' depending before ther oun judges.

We neid not fear that the King or his Brother will make a bad use of this power; but Kings of Britain may come who, like Pharaoh, have not been amongs us to know us, and so will not regard to cause both parties and judges to plead ther actions, or justify ther sentences at Whytehall, and that on the pretence of this prærogative of the evocation of causes to himselfe, tho' living in another kingdome, and at a remote distance: and Bodin, *ubi supra*, makes it a badge of royalty, that the Prince, without his subjects consent, may prohibite, abrogat, derogat, subrogat, and obrogate to the standing laws, wheir he sees it necessar, excepting the laws of God, of nature, nations, and fundamentall laws of the lands: and in the other place cited, he makes it *caput majestatis* to have *supremam et ultimam provocationem*, the last and derniere resort and cognition of all causes; which justifies appeals to his Majesty, at leift protestations for

remeid of law ; tho' in 1674 the King was made to condemne and discharge the first, of which see many observes *alibi*.

The Lords having considered the King's Letter, they appointed the Prefident, Register, King's Advocat, (tho' none of ther number,) and Pitmedden, to forme the draught of ane apolegetick letter to the King, giving him a short hint of the grounds of that affair, and representing that his royal predecessors had founded that Court with a power to determine finally and ultimately, without any appeall ather to the King or Parliament: however they submitted to his Majestie's royal pleasure in the case. See this affair *supra* pag. 121, [No. 385.]

No. 410,
p. 133.

Eodem die, post meridiem.—At Privy Counsell, Turner the cabinet-maker, (*de quo supra* Augusti [22 Julij] 1684,) is licenced to set up a freeman, tho' the Wrights opposed him, feing he had made ane essay of ane indented table and standishes, with which the Privy Counsell ware satisfied, and therfor discharged his fyne.

2^{do}. A question arising, if the shire of the Merse, or any other, may choise Commiffioners to the Parliament, wher ther former members ware willing to give a dimission. The Privy Counsell, after a hot debate, fand thesse members could not renunce ther King and countrie's service, except in Parliament, for a cause accepted of ther hands their; and therfor would allow of no elections in that case, *medio tempore*, as unwarrantable.

No. 412,
p. 133.

15 Januarij 1685.—This day the Circuit Justiciary Court for the Shire of Fyffe began; wher the Earle of Balcarhouse, and Collonell Claverhouse sat, by the King's and Privy Counsell's Commiffion. Wher they proposed, 1^o The oath of abjuration of the late phanaticall Declaration of War, conforme to the new A& of Privy Counsell, to be tane by men and weemen of all ranks above 16. And the country being thus purged, then a general indemnity to all but thesse under proces was expected to follow; which they would rather make the King's deed, than give the Parliament any share in it. The 2^d proposeall was, requiring ther offer of a voluntar cesse.

Eodem die.—Mr. William Beton, Mr. James Alexander, Mr. Archibald Hope, who are heritors in Fyffe, and Advocats, gave in a bill to the Lords of Privy Counsell, craving that they might be excused and dispensed with for ther not attendance on the said Circuit Court, feing ther imployment tyed them heir. The Lords granted the desire of their bill. No. 413,
p. 133.

All this week, the Magistrats and Elders of the Town of Edinburgh ware bufy, by order of the Privy Counsell, taking up, upon oaths, from masters of families and landlords within Brugh, the names of all the perfons in ther families presently, or who have been in it from the beginning of November last; as also the names of all the tennents who dwell in or possesse any part of ther houses, to prepare the rolls for the Circuit infhueing.

Eodem tempore.—William Brody, coufin to the Laird of Brody, is apprehended, and examined what money he had of the Brodie's, and for what use it was in his hands; and if he knew that Bailzie John Hall kept correspondence with Mr. Robert Martin, or if their was any trust of any part of Mr. Robert's means or fortune conveyed to him: And getting no discovery by him, they set him at liberty. No. 414,
p. 134.

17 *Januarij* 1685.—William Hamilton of Wisshaw, having been under arrest and bayll some dayes before, is now committed to prifon, with one Miller of Carfybank, his neihbour. It was supposed to be for some accession or connivence to Bothuel-Bridge rebellion. Afterwards they ware made use of to depone as witneffes before the Parliament againft the Lord Melvill. No. 416,
p. 134.

2^{do}. A woman is apprehended in fojor's cloaths in Edinburgh, and imprifoned. It was found shee had stollen some things, and to shun discovery had put hir felfe in that disguise.

20 *Januarij* 1685.—The Circuit Justiciary Court, appointed by the King and his Privy Counsell, meits and begins first for the Toune of Edinburgh and Shire of Mid-Louthian. The Commiffioners ware, the Earles of Winton, and Linlithgow, Colinton Justice-Clerk, my Lord No. 419,
p. 135.

Register, and John Wedderburne of Goffuird. They red ther commiffion, and choifed Tarbet, Register, to be ther Præfes. They called firft for the haille Minifters, and craved they might, upon oath, give in lifts of all the irregular peeples in ther refpectiv parifhes, not only thofe who abfented themfelves from the Church, but alfo fuch as did not communicate with them at the Lord's Table yearly, conforme to the penalties of the 17 A&t of Parliament in 1600. They ware very unclear, and offered rather to tell who communicated with them, then who not; tho' this gave difcovery eneuch. Then the Magiftrats of Edinburgh (the Proveft was fitting with them) ware called, and required to make a voluntar offer of a cefse; and they ware made Commiffioners within ther oun bounds to adminiftrat this abjuration oath to ther Burgefles; and they ware put to take the Teft on this head, and allowed to delegat others under them in the feveral quarters of the Toune, to take the faid oath of every perfon above 16 years old.

No. 420,
p. 135.

Eodem die.—Was held the head Shireff-court of Edinburgh, which fhould have been kept the 20 daye after Zuille. The Chancellor as Shireff being prefent, the freeholders fuit-roll was called, and fundry appeared by attorneyes; and Sir John Clerk of Pennycuick, protested he was not liable in appearance ther, becaufe a blench holder. The King's Advocat protested in the contrare. (See this debate *alibi* in my notes on the A&ts of Parliament made in 1672.) Then Colinton as Conveiner declared, that his Majefty having made him Juftice-Clerk, he was no more capable to ferve the Shire as ther Commiffioner; and defired they might proceed to elect one in his place. Then all the heritors ware defired to remove, except fuch freeholders as had a vote, viz., ather a 40 fhilling land, or a 400 lb. valuation; which being done, the Shireff-Clerk adminiftrated the Teft to all who ware to vote. After which, and figning it, Hew Wallace of Ingliston, moved, that, by the [21st] A&t of Parliament in 1681, they ware impowered to choife ther oun Præfes, and Clerk of the meiting. The Shireff-deputés opposed this; but the A&t being red, it was found fo, (for the Chancellor was now removed;) fo Colinton was chofen, and it being ftated, who fhould fucceed him as one of the Commif-

fioners to this enshueing Seſſion of Parliament, his ſone, my Lord Reidfurd was unanimouſly choiſen. Sir John Dalmahoy propoſed, that, according to the cuſtome of the Shire, they might ſerve gratis. This ſhould have been paſt in ane act before the election, but it was generally acquieſced to, tho' S. J. C[oupar] of Gogar, the other Commiſſioner, repined at it. Then the blank commiſſion ther ready was filled up, red, and ſigned: theſe words of it ware taken exception at, that it empowered him to meet with the reſt of the Parliament to choiſe the Lords of the Articles; but it was paſt from, becauſe it was affirmed it had been the conſtant ſtyle of all the former Commiſſions.

19 & 20 *Januarij* 1685.—At the Criminal Court, two men are ſentenced No. 422, to be hanged, for not diſowning the late apologeticall Declaration of P. 136. War; and to cut of the great crouds of peepſe who uſed to attend them at ther execution, they privatly appointed them to be hanged at the Gallo-lee, on the 23^d of Januar, at 7 a'clock in the morning, which was accordingly done.

22 *Januarij* 1685.—The Lords ſequeſtrate this fornoon for adviſing and No. 423, deciding the famous and oft debated cauſe of the Capers and 2 prize P. 136. Daniſh ſhips, called the Patience and Palme-tree, of Sunderberg, (*de quo ſupra* 7 *Novembris* 1684.) It was now debated, that the King's letter could not take away the ſtrangers their decreets abſolvitor *in foro*; which Sir G. Lockhart debated, but faintly in this caſe, becauſe he was put juſt to maintain the contrare for the King's letter in favors of the Dutcheſſe of Lauderdale againſt the Earle theirow. 2^{do}. They argued, they ware not in the caſe ſtated in the King's letter. Ther aroſe a great diſſention, if the proving that they carried ather double or concealled documents, any one of them was ſufficient to conſiſcat the ſhip, or if they behooved to prove both; whither it was the *and* copulative, or the *or* diſjunctive? Tho' ſome lawyers inclined to think any one of them ſufficient, yet many of the Lords ware for adhæring to ther laſt interlocutor, that they ware free ſhips, but fand the Capers had probable grounds to bring them up, and therfor affoilzied them from all dammages, but fand them only liable for the value

as they ware roused. But the Statfmen carried it, that the cafe fhould be remitted to be finally decided and determined by the King. So if his Majefty please, he fhall get cafes enough to hear by this his cumulative power.

No. 424,
p. 136.

Eodem die.—At Privy Counfell, the heritors of Orkney and Sheitland gave in a libell againft Captain Andrew Dick, late Stewart, tackfman and Chamberlayne there, for many great malverfations and oppreffions, wherof one was very groffe ; that, by a contract, he ingadged himfelfe to deliver the bodies of 100 men to a Dutch Captain for their wars, and feized on fundry free fubjects, and fent them away by force ; which is *crimen plagii* in the Roman law and capitall : for *liberi capitis hominis nulla est æftimatio*. The Lords admitted the libell to probation ; tho' he alledged he had the affent and concurfe of the gentry there, to free theffe Iles from vagabonds and theiffs.

No. 430,
p. 138.

28 *Januarij* 1685.—Some merchands of Edinburgh, as James Maclurg, John Melvill, &c., are apprehended and brought before the Secret Committee, and after examination on their irregularity, &c., are liberat on caution.

No. 431,
p. 138.

29 *Januarij* 1685.—William Craigie of Gairfey in Orkney againft Muidy of Melfiter their : Upon report of Reidfurd, the Lords refufes, ather to make the Stewart of Orkneye's fiars, or the Exchequer prices, the rule of the count and reckning between them, as to the price of the victuall tack-duety, for extinguifhing Craigie's wodfet by payment ; but did not find the contract ufurary ; and ordains the prices victuall then fold for in the country to be the rule, in fo far as the famen can be proven ; and wher the fame cannot be proven, they remit to the Auditor to take the way he finds moft probable for knowing the prices, by the Comifar's fiars of Caitnes, (which is the nixt adjacent Shire, tho' its corne is better,) or by making its price to be fo much more as the Exchequer's price, or fua much leffe as the Stewart's price, as he fhall find to be juft according to the ordinary cuftome.

2^{do}. Then Melfiter, upon a bill, craving a Commiffion to examine the witneffes at Kirkwall, the Lords, by ther deliverance dated 26 February 1685, remitted to the Ordinar who heard the caufe, to grant a Commiffion or not; as alfo to name the Commiffioner.

3^{tio}. Then Gairfey having reclaimed, by a bill, the Lords, on the 6th of March 1685, adhæred to ther former interlocutor, and refufed to oblige Melfiter to prove only by gentlemen and merchands the current prices of victuall in Orknay fince 1638, (the date of the wodfet,) he proving by habile witneffes, againft whom ther is no legall exception; and refufes to allow Gairfey a joynt probation as to the prices then giving amongs gentlemen in that country.

4^{to}. Yet Gairfey, on a new bill, obtained a contrare deliverance on the 24 of March 1685, allowing the prices only to be proven by merchands and gentlemen who traded in victuall, and not by other witneffes: but ftill refufed him a mutuall probation, or to make the count proceed for the prices he or his father got for Melfiter's fermes.

29 *Januarij* 1685, *post meridiem*.—Sir Daniel Carmichell is committed No. 433,
prifoner to the Caftle of Edinburgh, upon a præcognition taken, wheirin p. 139.
fome witneffes deponed on his acceffion, in furnifhing out to the late rebellion at Bothuel-Bridge, and keeping correffpondence with rebells in Holland.

2^{do}. They advife the cafe of the Orkney heritors againft Captain Andrew Dick, (*de quo fupra* 22 *Januarij* 1685,) and many groffe articles of the libell are found proven, and particularly that about his felling the King's fubjects; but becaufe that was before the Indemnity in 1679, the Lords would not punifh him for that, but fufained the King's Indemnity as a pardon for all fuch crimes preceeding it, tho' it was no act of his truft and adminiftration; and in my Lord Lauderdale's cafe of the Mint, 19 *Januar et feqq.* 1683, (*pag.* [290] of the MS. E,) it was repelled to him. Yet, in regard other oppreffions and malverfations ware made out againft him, they commanded him instantly to remove his family out of Orknay, under a great penalty, never to be feen their again; which is a new way of banifhment and relegation.

30 *Januar*.—The Faft was obferved for the murder of King Charles the Firft.

No. 434,
p. 139.

31 *Januarij* 1685.—The Faculty of the Advocats gave in a bill, complaining, that ther rounge was fo crouded with multitudes of all kinds, that they could not ferve ther clients in the inner-houfe, and at the fore and fyde-bars; and that fundry agents, and others, did fo place themselves befide the Clerks of the utter-houfes board, that ther papers could not be fecure, (unleffe they would give refaits for them, wheirby they knowing themselves to be anfwerable would then be more carefull;) therfor begging the Lords would allow the Advocats to impofe half-a-dollar to be exacted by ther door-keeper, John Ballantyne, of every one that attempted to come within our bars, except Noblemen and Wryters to the Signet, who are priviledged; and this to be applyed to the ufe of our Library; and to make what other Statuts or regulations as may tend to the order of the houfe. The Lords granted the defire of this bill.

No. 435,
p. 139.

Eodem tempore.—The heritors of Mid, Eift, and Weft-Louthians being called before the Lords of the Circuit and Jufticiary, viz., the Earles of Winton and Lithgow, the Register, Juftice-Clerk, and Goffoord; they made a voluntar offer of 3 moneth's cefle for one year, over and above the fubfidies already given; and in ther addrefle, alfo, oblidedged themselves that, upon intimation to be given them by ther minifters, they fhall endeavour to apprehend and prefent to juftice any irregular peeples living upon ther ground, or elfe fhall be liable in ther fynes.

No. 436,
p. 139.

2 *Februarij* 1685.—At the Criminall Court, deforcing officer, poinding on Comifar's decreit, involving civill rights: Court continue dyet till November, to allow the civill claim to be fettled in Seffion.

No. 438,
p. 140.

4, 5, 6, & 7 *Februarij* 1685.—All thir dayes are confumed in debating *in præfentia*, that famous reduction raifed by the Earle of Lauderdale againft the Earle of Aberdeen, late Chancellor, of the decreit of the Mint, (of which decreit fee *alibi*, Manuscript E, at the 19, 20, &c. of Januar

1683, at great lenth,) and of the tranſaction and homologation he had made theiron, by granting him a ſecurity for 100,000 lb. Scots; in which debate ther was more groſſe reflections, both among the parties and advocats, then had been licenced in any cauſe before.

Aberdein's two defences ware, that 1^o It was *res tranſacta*. 2^{do} *Res judicata*, and ſo it was unquarrellable now. The anſwers ware, That the ſentence and tranſaction flowed both on *vis, metus, dolus*, and concuſſion. Aberdein's Lawyers ſhunned to dip on the decreit; and therfor they ran to thoſe 2 generalls to exclude all reduction, viz., *res tranſacta et judicata*; that the Lords ſentences are irreverſible, as was found by the Lords on the 22 of June 1676, Iruing of Lenturk againſt Iruing and Roſſe; and this ſeſſion, betuen Falconer of Kincorth, and Kinneirs, that *Lex 10, l. 19 et 20, C. de tranſactionibus*, calls it *improba poſtulatione*, to crave tranſactions to be reſcindid; and it's the moſt ſacred, binding, and inviolable of all contracts, and is derived from *trans adigere*, to rivet and dryve a naill to the head; and its called *exceptio privilegiata et impeditiva litis ingreſſus*. Anſwered, Ther are ſeverall cafes wheirin tranſactions may be quarrellid, as if they be elicitid by dole, force, fear, or concuſſion; or that ther is *læſio enormis*, as appears from *Lex 65, § 1, D. de conditione Indebiti, l. penult. et ult. C. de his quæ vi metusve cauſa fiunt*; &c.

Aberdean alledged the promiſe of impunity given to Sir John Falconer, to depone as a witneſſe againſt Lauderdale, was not contrare to law; ſeing *Farinacius quæſt. 67, de corrupti teſtis pæna et probatione; num. 51*, allows it in *criminibus occultis*; but certainly to give witneſſes *ſpem veniæ* is contrare to all law; for as they will load others for ther oune exoneration, ſo how can they purge themſelves of partiall counſell and receit of good deid? All which neceſſary præliminaries for witneſſes ware omitted to be put to Sir John Falconer: Only it may be doubted if Sir John's new teſtimony is to be credited anent the *ſpes veniæ* and ſubornation; and if not rather the firſt ſhould ſtand as a *jus quæſitum*.

Againſt John Falconer the wairden's depofition, Lauderdale objected; 1^o That it was but a ſingle teſtimony, *cui non credendum, licet eſſet Papa, licet eſſet Imperator*. 2^{do} It was *ex incontinenti* retracted by him; the 1st depofition ſaying, That, in the 1 copper journey ther was

17,000 ftone of copper; and the 2^d bearing, that on perufall of his memorialls, he found ther was only 7000 ftone; fo he retracts 10,000 ftone; by which it's evident that his testimony is not able to bear the weight of a fingle fton of copper, let be 17,000 fton, which will certainly crush it to annihilation. 3^{tio}. John Falconer the wairden being dead before the intention of the civill proces, his oath which was taken in the præcognition and inquiry before the Commiffion was only repeited in *modum probationis*, before the Lords of Seffion; which was no fufficient probation, feing *acta et probata in judicio summario vix fidem faciunt in plenario*: which fee with its exceptions in Mascardus, *volumine de Probationibus, conclusio, 33 et 34*, and the lawyers ther cited, with the gloffe *Zuarez, et Regiam Majestatem*; cited on the margin of my Durie's Decifions, at the 16 of Januar 1628, Finlafon contra Linkup, and the diftinction *fi probatio temporis cursu mutationem recipiat necne*. Aberdean contended, that John Falconer the wairden's first depofition ought to be credited more then the 2^d, yea only; as Clarus in his Criminalls teaches, § *ultima quæftione 53 et 54, de exceptionibus contra testes*. And wheras it's objected againft Aberdean, that he had ane intereft in the faid Mint decreit; *eflo* it ware, he yet might vote in it: for in Riddell of Hayning's cafe, (who was one of the Border Commiffioners,) the Lords found he might fit and vote, tho' he had a gift of the fynes of fuch as ware to be condemned; and does not the Lords of Regality the fame? and in the cafe of Caped fhips, fome of the Lords of Seffion who had a fhare yet voted; but law faves, *nemo Judex fedeat in causa propria*, and judges moft be like Cæfar's wife, not only chafte, but void of all fufpicion, *debent et mentes manusque puras habere*.

Duplyed for Lauderdale, That *læfio enormiffima* hes ever been allowed to refchind tranfactions, and was fo decided in the 2 moft famous judicators of Europe, viz., the Parliament of Paris, as John Papon in his *Arrests*, book 16, title 3^a, num. 6, pag. 940 *et feqq.*, tells; and in the Imperiall Chamber of Germany, recorded by Mynfinger, *centuria 1, observ. 33 et centu. 6, observ. 91*, and Gayllius ther cited. That Maranta, in *fuo Speculo Advocatorum feu praxi aurea, parte 6, num. 128, et feqq. Titulo quando fententia tranfit in rem judicatam*, fhows, that it is not repute a fentence

wher it proceids *super falsis vel ineptis probationibus*. That *Metus* was sufficient heir, because it proceeded from him *qui minas suas exequi solitus erat*; as Aberdeen had used concussion against the Earles of Mar, Erroll, and Braidalbin: And tho' thir instances were alledged to be extrinſick to Lauderdale's case, and ware meirly conjected and accumulat to blaiken and fully Aberdeen's reputation, and to justify the great men's accusations by which they had gotten him laid aside, the *præfervidum Scotorum ingenium* not suffering any great man to fall softly, yet for vindication of the Lords, who suffered theſe extraneous articles also to be proven, it was remembered, that lawyers draw arguments *a tempore præterito ad præſens et futurum*; &c.

But pique and deſigne was very evident in all this proces; for my Lord Lauderdale, and his ſone Maitland, ware allowed, in 2 elaborate diſcourſes, to traduce him at the bar; and they called in Mr. William Fletcher, one of Aberdeen's advocats, and ſharply rebuked and threatned him, for uſing this expreſſion in the debate, That my Lord Aberdeen could juſtify all the interlocutors he had procured when he ſate on the bench, and that he nather was guilty of injuſtice nor malverſations. Which ſome thought might have paſt weill eneugh in his lawyers debate for him; but the great men looked upon it as a tacit reflection upon them; and therfor would neids have him retracting it, yea, propoſed that he ſhould doe it publiſtly. But the moderat party prevailed, that his acknowledgement ſhould be only before the Lords.—This raiſed a pain in Mr. Fletcher's head, wheirof he was never altogether free till he took that fever in June after, wherof he dyed.

The accident of his Majeſtie's death, before the adviſing of this cauſe, gave ſome cooll and reſpite to my Lord Aberdeen; for the King dying on the 6^t of Februar, and the news reaching us on the 10^t, and it not being adviſed till the 17^t of Februar, ſome of the Lords appeared more freely for Aberdeen, apprehending that his Royall Hyneſſe, now King, had not quite forgot the kindneſſe he once had for the Earle of Aberdeen. Ther ware 6 Lords voted for Aberdeen, that the reaſons of reduction ware not relevant, viz., Kemnay, Harcous, Bayne, Saline, Edmiſton, &c. Caſtlehill was declined on the late A& of Parliament in 1681, as

uncle to the Lady Aberdean. The interlocutor, on the 17 of February when they came to advife it, was : “ The Lords, before anfwer, ordained the perfhuar’s proctors to adduce what probation or evidences they can for inftructing the feveral qualifications of concuffion infifted on by them in the debate ; and the defender’s proctors to adduce any probation or evidence that they can, for clearing the tranfaction was voluntar, and the defender’s unwillingneffe to accept of this donative of the Mint decreit, and any other alleviations alledged in the debate, for taking of the qualifications of concuffion ; and affignes the 10^t of March nixt for both parties proctors to prove, *ut fupra*.” Some of the Lords thought, that Lauderdale being *in libello*, he fhould have got the fole prerogative of probation ; but it was carried, that it fhould be conjunct and mutuall.

Then the Lords, on a bill given in by Lauderdale, abridged the day to the 26 of Februar, and ordained the Earle of Mar to be prefently examined on Aberdean’s concuffion ufed againft him, becaufe he was going out of the toune ; and tho’ Aberdein, in a bill, alledged, That no fuch extrinfick afts could be tried in Lauderdale’s proces, but only his oun cafe ; yet they, to beblaiken him (for *calumniare audacter*, &c.,) allowed all to be examined ; but, becaufe he reprefented that he had fome of his witneffes to bring from the North, they gave him the firft dyet of the 10^t of March for his probation ; and appointed him to fee Lauderdale’s interrogators to the witneffes. (See more *infra* of this *ultimo Martij*.) Had it not been the intervention of the Duke of York’s afcenfion to the Croun, the interlocutor had contained yet leffe favour for Aberdeen.

But to add a few remarks farder on the cafe ; I find J. Menochius in his *cafus arbitrarij*, cap. 135 et 136, *in fine*, makes *metum potentiae* a fufficient ground wheron to quarrell deads then extorted ; and we have instances and decifions upon it in our oun law, recorded by Hope in his titles of Shireffs and of decreits-arbitrall, folio 148, betuen the Lord Zefter and King James the 5^t ; item, in his title of Reftitutions *in integrum*, and Reductions *ex capite metus*, folio 214, betuen the Earle of Morton and Quean Mary, wher deeds ware reduced, becaufe of concuffion and terror injected by the King himfelfe : And Grotius *de Jure belli et pacis*, libro 2, cap. ij,

num. 7, and G. Zieglerus in his notes their, are clear, that all law hath allowed remedies wheir fear or dole hath given rise to the transaction; and Jeremy Taylor in his *Ductor Dubitantium*, in fine 4^t book, cap. 1, rule 6^t, pag. 804, *et seqq.*, and rule 7, pag. 808, is of the same mind; as also, Joan. Sneiderivinus *ad Institut. tit. de actionibus*, § [], *de actione quod metus causa*, pag. 1439. As to the nature of transactions, see Stair's Decisions, 3th Julij 1668, Row and Houston. That a decreit *est quid individuum*, so that if this decreit of the Mint be null *quoad* one part, it is absolutely null *in totum*, is clear from *l. 27, D. familiæ erciscundæ*; so that the Lords finding but one nullity in this Mint decreit, it casts it all open, and turns it to a libell. And reiteration of acts of transaction imports nothing to infer homologation, or take of concussion, while the impression lasts; and is never a free and spontaneous act, *donec obligatus pristinam libertatem fuerit adeptus*, and the cause of the fear cease and be removed; and they agree, that *jussus principis cum comminatione junctus* may occasion this *justus metus in constantem virum cadens*. Heraldus in his books *de autoritate rerum judicatarum*, declaims from Cicero, and others, against those sentences that are procured by corruption of the judge, byassed *odio, spe, vel timore*; and the Greek judges at Areopagus expressed it by a very significant word, *κακοτεχνία*, a contrivance, ane *illecebra*, or charme. For Aberdeen's designe in zealously carrieng on that Mint decreit, was with ane eye and prospect to get the benefit of it to himselfe; and therfor the Clerk Register then gave Lauderdale a watch word, to remember they ware his enemies whom he should see get the pelf; and that Aberdeen stopped ther remission, and caused the Earle of Perth propose to the King, that he might be rewarded out of the fyne of the Mint; and he carried on all the tryall before the Committee, and wrought up the Lords of Session to comply with his interlocutors theirin, &c. God is so weill satisfiied with that sentence of Satan's, "skin for skin, and all that a man hes will he give for his life," that he hes recorded it in His oun Book, to shew what fear or hope of life will doe.

The preparative of thir proceffes may be very usefull for the common peep, to be some chek to deter great men from oppressing them grosely; but thesse proceffes are only created and fomented by interest, malice,

and passion, to ruine some fallen Courtier, or to incapacitate him from ever ryfing to avenge himfelfe again; fo that I dare fay, that thir proceffes againft concuffion are never defigned mainly to repair the injured parties; tho' it be fome pleasure to the populace and mobilee to fee ther oppreffors repayed in ther oune coyne, albeit no materiall advantage redound to them from thence.

No. 439, 5 *Februarij* 1685.—At Privy Counfell, James Row, George Mofman, p. 144. and many other of the merchands in Edinburgh of the Prefbyterian perfuafion, are perfhued; as alfo Anderfon of Dowhill, Craigie of Dumbarny, Oliphant of Condee, &c., as they who, fince the laft Indemnity in Auguft 1679, have frequented houfe or field Conventicles, refet fugitive Minifters, or other rebels; and, particularly, did contribute money to fee if they could procure a remiffion from the King to Mr. William Veitch, a phanatick forfaulted Minifter: *Item*, to educate and breid up fome young ftudents in the Prefbyterian forme, to be a nurfery to perpetuat and hold up the fchifme. Some redeimed themfelves by offering to take the Teft; others efaped by taking the oaths of alledgeance and prærogative, without any additions or limitations of ther oune, (which ware all refused,) but as it is explained in the Affertory A&t, made in the Parliament 1669, and which was exprefly put to them. A third fort refused both; and fo ware committed to prifon as difaffected to the Governement.

2^{do}. The Lady Bamf, daughter to the Earle of Marshall, gives in a complaint againft Ogilvy my Lord Bamf, hir husband, that he refused to cohabit with hir, and therfor craved ane aliment might be modified to hir; his jealoufy was of hir being difloyall to him with one Lefly Shireff Clerk of Bamff. The Lords referred the confideration of the bufines to a Committee; who having given in their report, on the 17 of Februar, the Privy Counfell then modified to hir 2000 mks. by year; with certification, if it were not punctually paid hir termly, it fhould be doubled; and ordained the husband to aliment the children himfelfe. He reclaimed much againft this, his eftate being low.

3^{tio}. The Earle of Tarras's remiffion is paff, and he fet at liberty out of the Caftle; it only pardons his life, and reftores him and his pofterity to

ther fame, but not to his title of honor, (which even before was only *ad vitam*,) and ther was no account how his estate was to be disposed of, or how much theirow they would allow him to himselfe. (Now it's annexed to the Crowne, by the [42^d] A&t of Parliament in 1685.)

6 *Februarij* 1685.—The Privy Counsell is called extraordinary, on No. 440, the occasion of the flying post, or expresse, sent to them by his Royal ^{p. 144.} Hynes the Duke of Albany, telling, That on Monday the 2^d of Februar, being Candlemas day, the King was seized upon with a violent convulsion, and apoplectick fitt, which stupefied him 4 howers; but, by letting 12 unces of blood, and applying coupling glassses to his head, he revived. This unexpected surprize put our Statfmen in a hurley-burly, and was followed by the news of the death of this Prince, which happened on the 6^t of Februar, and came to us on the 9^t of Februar at night, or the tent in the Tuesday morning. Wherupon a theater is immediatly erected at the Crosse of Edinburgh, and all the Militia companies are drawn out in armes; and at ten a'clock that fornoon, the Chancelor, Treasurer, and the other Officers of State, with the other nobility, and Lords of Privy Counsell and Seffion, and ther Clerks, and the Magistrats, and whole Toune Counsell of Edinburgh, came to the Crosse, with the Lyon King at Armes, and his heraulds and trumpeters: and then the Crosse and stage being covered with arras hangings; the Chancelor carried his oune purse, and, weeping, proclaimed James Duke of Albany the only undoubted and lawfull King of this realme, under the name of James the 7^t; the Clerk Register reading the words of the A&t to him; and all of them, with lifted up hands, swore faith and alledgeance to him. See it in print, intituled, A publication of his Sovereign authority, and not a proclamation of him as King, leift that should seime to import the peeple had any hand in giving him his power. M. Vefembecius *in notis ad Sneidivinum in Institut. in proemio*, pag. 6^t, sayes, *Coronatio principis non est necessaria*; and tho' he mainly aims against the Pope's crowning the Emperour, yet the case is true in the generall: See the forme of the A&t proclaiming King Charles the 2^d to be King of Scotland, in the 14^t A&t of the Parliament held in 1649, containing fundry treasonable limitations of his power, by the Solemn League

and Covenant, &c. See the same Charles the 2^ds proclamation at London in 1660, in the History of the Civill Wars of Great Britain, *pag.* 416. See the English proclamation of the present King, under the name of James the 7th [2^d]; nather it nor ours are so delicate, in regard of the surprize and haste was made to proclame him.

Then the other proclamation was red, wheirby King James by his letter continued all offices till he had more tyme to send doune new commiffions. The English one reserved power to him to confider the bygane errors and misgovernements, that he might redresse them. Then the Castle shot a round of guns; and a sermon began, wher Mr. John Robertson minister, did regrait our losse; but desired our tears might be dried up, when we looked on so brave and excellent a fucceffor. Ther ware bonfires, bells, and cannons in the afternoon. The Privy Counsell called for all the Sealls, and broke them; and appointed new ones with the name of James the 7^t to be made.

The nixt day being Wednesday, and the 11^t of February, the Seffion fate doune again, tho' the King's warrand did not mention them *per expreffum*; and the Lords thought it fitt (*juramentum*, being only *obligatio personalis*, and so dying with the person to whom it is made,) not only to take the Oaths of Alledgeance, and the Test of new again themselves, but also to adminiftrat it to the Advocats, Clerks and Wryters.

Many questions arose on this sad emergent; as, If the Parliament could hold, which was called by the last King, feing *mortuo mandatore expirat mandatum*, and it might be of a dangerous preparative to the Governement to assert it continued in being; for then a Parliament called by a King might convey without the consent of the fucceeding King, and make Acts prejudiciall to him; or, If a Parliament should happen to be fitting at the death of a King, they might continue to sit; wheiras heir all the inconvenience is, that, by the King's death, *perit instantia*, and all the citations of the rebells to compeir at it [will fall;] so ther most be a new indiçtment of a new Parliament in this King's name, (if he think fit to call one,) with a new election of Commiffioners for Shires, and Burrows, and new citations to the Criminalls; and so Craig, *Feudorum*, *pag.* 55, thinks all offices cease on the King's death, thesse being terminat

tam morte dantis, quam accipientis; and which is clear from Rushworth, ther cited by me, in his Historicall Collections, at the death of King James in 1625; and from Perezius and others, also ther cited. Others said, *Rex nunquam moritur*, the Royall authority never faills; for *ipso momento* that Charles's breath went out, James his brother was King; and therfor he, by a dispensation, may put life in the Parliament tho' dead, and make it revive and reconvalesce, and declare by a proclamation, That, for the ease of his peeple, and good of his governement, it is his pleasure, that Parliament should hold at the day formerly præfixed by his brother, only name [naming] a Commiffioner to supply his oune place in it. But, at last, our Statesmen agreed on this as more legall, that a new Parliament should be called. 2^{do}. It was doubted, how far personall protections granted by the last King, but not perfyted by passing the Sealls, subsisted? 3^{tio}. If Magistrats of Burrows, who ware not immediatly named by the King, but *suffragio populi*, by ther severall incorporations, if ther places fell? And it was thought not; and therfor the Mair of London, in ane *interregne*, till the new King be proclaimed, is the first person in England; his authority continueing, that of the Chancellor's, &c., ceasing. But now, at this tyme, since the *quo warranto* past against London's Charter, ther Maior was in the same case with the other Officers of State immediatly named by the King.

On the 11^t of Februar, the Privy Counsell commiffionats the Earle of Drumlanrick, son to the Treasurer, and the Clergie adjoyns Doctor Faw to him, to goe to London to condole the death of the late King, and to congratulate his present Majestie's peaceable arrival to the Throne; with some other private instructions anent calling the Parliament, &c. They said, this young Embassador faltered in the delivery of his speach to the King.

On the 14 of Februar, the Wryters to the Signet gave in fundry Quæries to the Lords of Session, as to summonds and diligences inchoat in the last King's tyme; as, 1^o. Wher a summons was raised, signet, and execut for the first dyet, before his death. 2^{do}. Wher signators of chartors ware componed, but the Sealls not appended. See this cleared on the death of King James the 5^t, by the 1 A&, Parliament 1, Quean

Mary. 3^{to}. Wher breiffis ware execute, but the day of the service was not come at his death. 4^{to}. Wher debtors ware denounced, or captions un-execut, which run in the last King's name; and the same occurred in inhibitions, arreiftments, charges to enter air, lawborrows, fuspensions, advocations, &c. The Lords of Sessio, by ther printed A& of Sederunt, of the said 14th dayes date, sustained them all, for the ease of the peeple, and saving them expences; and ordained them to goe on in King James the 7th name heirafter. The like was done in 1649, on the death of King Charles the 1. Some thought a dispensation or ratification from the present King was necessar: yet others answered, Tho' *mandatum perit morte mandatoris*, yet heir *Rex nunquam moritur*; but the Royall authority is the same, *et Rex mortuus fasit vivum*. *Quæritur, An idem juris*, as to libells before the Privy Counsell, or the Criminall Court? And it was alledged by some, wher the last King was principall pershuar, thesse ceassed and perished, but not wheir he and his Advocat only concurred, and insisted *pro interesse et nomine publico*.

No. 443, 12 *Februarij* 1685, *post meridiem*.—At Privy Counsell, James Buchan
p. 147. of Oikhorne, pershues James Forbes of Savock, and his wife, for thrusting him out of the possession of a rouse, and in a ryotous and violent manner investing his possession; which is of very dangerous importance and preparative. Alledged for Savock, That, upon his reducing James Buchan's recognition of the lands of Auchmacoy, he had now best right to the said lands, and had obtained decreits of removing, and for maills and dueties; and so the case being meirly civill, ought to be remitted to the judge ordinar. The Privy Counsell admitted the libell to probation.

No. 444, 13 *Februarij* 1685.—Sir Robert Sibbald, Doctor of Medicine, having
p. 147. pershued the Lady Rossyth, at Privy Counsell, for his dammage incurred by the negligence of hir and hir servant woman, in burning his house in Edinburgh, in Aprill last. The Privy Counsell, because of the novelty of the case, remitted it to the Sessio; tho' it had been more proper that the Counsell had imposed ane arbitrary fyne; and this fornoon it was debate in presence. . . . This debate being advised on the 24

of Februar, the Lords, before answer to so dangerous a preparative, ordained the witnesses to be examined upon the whole matter of fact, and as to the advertishment given hir, and the way and maner of the raising of the fyre, and what negligence was in it.

17 *Februarij* 1685, *post meridiem*.—At Privy Counsell, The Hy-Treasurer represented, That, by the late 8^t A& of Parliament in 1681, the annuity and excise became due to his Majesty, in a different way of uplifting from the former, wherby the Shires and land-rent, and Commisioners, ware liable to make up the deficiency; but, by this last A&, they ware free; and desired ther advise what he might doe, till the Parliament fate to redresse it; for, if he should set it in tack ther would be no favor showen; and therfor he aimed, that the severall Shires might voluntarily offer to continue the exacting of it in the same way it was lifted in the last King's tyme. No. 446,
p. 149.

2^{do}. The Earle of Kintore, Treasurer-depute, being returned from his Northren Circuit of Murray, reported to the Privy Counsell, That for Conventicles, and other ther wives irregularities, they had fyned the Laird of Grant in 40,000 lb. Scots; Brodie in 2000 lb. sterling, and so of the rest. (See more of this *infra* 21 *Aprilis* 1685.)

3^{tio}. Semple of Cathcart is imprisoned, by order of the Secret Committee, on a delation that he furnished out men, at leift connived at some of his tennents, who went to Bothuel-Bridge; but, on caution, he is liberat.

18 *Februarij* 1685.—The Bischop of Edinburgh against William Hay, Comissar-Clerk, (*de quo supra* pag. 130 *et seq.*) The Lords having heard all the malversations, with the answers made theirto, particularly that all committed before the transaction betuen the Bischop and him, wheirby he gave him 4000 mks., most be presumed remitted; (tho' it may be alledged, the Bischop knew them not at that tyme, and so was *non cogitatum*;) they ordained, before answer, the Bischop to prove his condescendence, and the Clerk to prove his alleviations. See both parties informations in my folio Law Manuscript. No. 447,
p. 149.

No. 448, *Eodem die.* — The Lord Leviston, being commanded down from London by his Majesty, on a false report writ up by Robert Mein, postmaster, That the phanatiques in the Westren Shires ware drawing to a head, and the King's forces ware marching against them; did, on his arrival, complain of the said Robert, for writing up false news; wheiron he was imprisoned for his rashnesse. But Collonell Woorden, (to whom he had writ it up,) who begins now to take upon him with this King, procured a sharp letter from his Majesty to set him at liberty. Some thought it was a sham of Queensberrie's, to get Leviston brought from Court, to see if he could get his place of Captain of the King's Guard to his son. But the Earle of Murray, Secretary, and unckle to the Lady Leviston, (who is Duffus's sifter,) he protects him yet.

No. 452, 20 *Februarij* 1685.—The King's letter being come by ane expresse, for calling a new Parliament to meit the 9th of Aprill, (a moneth later than the former one, now expired by the death of the King who had called it,) was this day proclaimed over the Crosse of Edinburgh. Ours was called to meit somewhat sooner then the English Parliament, to cast them a good exemple. Many ware the conjecturs whom his Majesty would make use of to be his Commiffioner in this Parliament; some named the Dukes of Hamilton, Gordon, Queensberry; and [others, that] Lundy and Midleton ware fair for it. It was industriously spread, That Collonell Leg, Earle of Dartmouth, was to get [it,] the King resolving to unite the 2 nations. Yet see *alibi* wher Quean Mary, and Mary of Lorrain hir mother, are complained of for putting in French men into our offices of State. Some alledged it was not a very defireable place, having broke most of them who ever possessed it; as Traquaire, Midleton, Lauderdale, &c.

No. 458, 25 *Februarij* 1685, being Ash-Wednesday.—*Dies Cinerum*, ther is no Session, being a fast observed for a good feid-tyme, by order of the Bifchop and Synod of Edinburgh, and authorized by the Privy Counsell.

No. 460, 26 *Februarij* 1685.—Mr. Arthur Roffe, Archbifchop of St. Androis,

goes to London, conforme to the offer made in our Scots Bifchops ther addresse they fent to the King.

27 *Februarij* 1685.—The Privy Counfell having fitten very late this night, whither as a sham to hide ther reall a&tings, or otherwayes ; Mr. Campbell, (Cefnock's fone, and late Captain of the merchand youths in Edinburgh ;) James Bailzie, Jervifwood's brother ; Robert Stewart, James's brother ; Samuel MacClellan ; one Turnbull, and feveral others, are feized upon in the night tyme, and tane to prifon, but the nixt day, upon caution, fet at liberty. No. 461,
p. 153.

Eodem die.—We had notice that Sir William Scot, younger of Harden, was apprehended at Newcastle, upon meir fufpicion : and young Sir Adam Blair of Carberry, being ther on the road from London, and being defired to goe to the prifon and fee if he knew him, he difcovered it was Harden.

27 *Februarij* 1685.—Ther was a tumult in the Outer Seffion-houfe, betuen the Noblemen and Gentlemen's footmen, and the Advocat's men ; the firft, in refentment that fome of our men had thruft fome of them doune out of ther feats, did combine, and gather to the number of 30, with kents, and affaulted our fervants ; who ingadging, took ther ftaves and fwords from them. The Chancelor came from the Inner-houfe in great haft, with his fword drawen, and feized on feveralls of them, and fent them to prifon, and threatned to hang fome of them for example ; it being death to draw a fword, or make a fray, when the Judge is on the bench, by the 173^d A& Parliament 13, James 6^t, in 1593. No. 463,
p. 153.

2 *Martij* 1685.—An expresse arrives from his Majefty, bringing, 1^o, with it, His general Pardon and Indemnity to the commons, tho' fugitives, if they take the oath of alledgeance ; and only excepts heritors, life-renters, burgefles, (which moft be only underftood of actual traffiquers, merchands, or tradfmen,) or vagrant preachers, (which does not extend to the Non-conformift indulged Minifters,) and the affaffinators of the Archbifhop, and the 2 gentlemen of the guard at Swine Abbey, and of No. 465,
p. 154.

Peirson, minifter at Carfefern, this laft winter ; but forgets the murderers of David Murray, and difmembers of John Bannatyne, both of the King's Guard, done at Inchbelly-Bridge, in June 1683. By this a&t it feimed, that Robert Hamilton, Generall of the Whigs at Bothuel-Bridge, James Stewart, Advocat, &c., might come home, and plead the benefit of the Indemnity, being in none of the exceptions. The only anfwer is, 1^o. That burgefles are excepted, and they, in conftitution of law, are above that degree. 2^{do}. Thofe that are denounced fugitives are limited within 20 dayes, which is impoffible for them to obtemper ; for the halfe of the tyme would be run, ere it come to ther knowledge in Holland ; fo they will cry out, that the fhortnes of the day makes it elufory and ineffectuall. But it was thought ill worded by Secretary Lundy ; for what if they had been in England or Scotland, lurking *incognito*, and craved the benefit of it within 20 dayes ? I think they will hardly truft themfelves to it.

This Indemnity appeared injuft, that it feimed to comprehend private crymes, as robberies, murders, &c., which ufe not thus to be pardoned, fave when they are committed on the publick account ; and it wants that reftri&tive claufe, that it fhall extend to all crymes which ufe to be comprehended in former A&ts of Indemnity ; but it cannot be extended to fuch private crymes. Thofe who, *supra* Februar 27, occafioned the tumult in the Utter-houfe, pled upon this indemnity ; and, tho' it was anfwered, That ther ryot was a day pofterior to its date, yet fome contended, it favourably fhould include all crymes committed before its publication, as A&ts of Parliament doe. (See more, *infra* 5 *Martij*, of this indemnity in the cafe of the Indulged Minifters.)

2^{do}. The fame exprefle called up to London the Chancelor, and Treafurer ; for ther ware effayes made to get Lundy to be Commiffioner for the Parliament ; but Midleton diverted it ; fo that Queansberry was agreed on, and they ware commanded up to receive ther fpeciall orders and inftructions ; and the other Privy Counfellers ware ordained to attend the King's fervice till ther returne. They parted on Saturday the 7^t of March. The Lord Sinclar, the Earles of Annandale and Traquaire, Philiphaugh, now pardoned, Robert Barclay the Quaker, &c., went before them. Amongst others going with them, was John Gray of

Creichie, to be recommended to his Majestie's favour for deciphering Argile's letters and the Plot.

3th. The Magistrats and Toune Counsell of Edinburgh, having sent up ane congratulatory addresse to the King, for his ascent to the Croun, they got a very kind letter of returne from the King, promising to be carefull of his good Toune.

4th. The same Magistrats, at the instigation of Thomas Hamilton bailzie, having by ther act granted ane ease and abatement of 5000 m^{ks}. to Captain Andrew Morton, and Alexander Hamilton, the said bailzie's brother, of ther tack-duety for the Toune's impost on the win, (pretending they ware losers, and that all the former tacksmen used to get that favor;) John Charteris one of the merchand counsellors, David Pringle deacon of the Chirurgians, John Chancellor late bailzie, &c., protested against the same, that the voters might be liable to the Toune for the damage, and took furth ane extract of this their protestation.

5th. Account being given to the Secret Committee, that the Westren phanatiques ware very insolent, especially against the Ministers, and those who had tane the abjuration oath; they sent Collonell Douglas against them, (in pick to Claverhouse, tho' the Ministers of Galloway said, Claveris's name was more formidable ther;) who made a detachment of ten choisen men out of each company, to march with him to those Westren Shires.

6th. The Hy-Treasurer caused Hew Wallace, Cash-keeper, charge Claverhouse on a bond he had given to the Exchequer for the fynes of delinquents in Galloway. He told, His brother was gathering them in, and craved a tyme. Queansberry offered him 5 or 6 dayes; he told, that was all one, considering the distance, as to offer him none at all; wheron the Treasurer replied, Then you shall have none.

7th. Sir John Dalrymple, when liberat in December last, was put under caution, and confined to Edinburgh. On a bill he now gets up my Lord Lauderdale and Maitland's bond of cautionrie, and gets his restraint enlarged ten miles about Edinburgh.

8th. There is a great debate in the Secret Committee, if those 21 who ware cited to the last Parliament for treason, can be cited to this, on the

faid old warrand and list signed by his late Majesty. But at last it was found it was expired, and that they could not, till his present Majesty signed a new warrand to cite them *de novo* to this current Parliament indyted by himselfe. In the last King's tyme, things ware formed heir, and sent up to Court, and ther past, and remitted doune again: But now they come straight doune without consulting the Secret Committee, who are on the head of affairs heir, and yet are surprized with some orders from his Majesty, knowing nothing of them before hand. Some blame Lundie's pragmaticknes for this, as taking more upon him then the former Secretaries did. But the active genius of our present King is more for hastie dispatch of busines, and inclines more to rule alone then his brother (who affected ease) did.

No. 468, 4 *Martij* 1685.—Sir James Stewart, as Shiref of Bute, pershues Mr.
p. 159. John Stewart of Afcog, Advocat, for reducing his right to the Crounary of Bute, and for declaring his lands free from the custome and casuality of so many oats, &c., payeable to the Crouner's Office, formerly belonging to the firname of The reasons ware; 1^o. He being a member of the Session-house, he had bought this right whille depending in a plea. 2^{do}. He acted and exercised the said jurisdiction before he had taken the Test. Afcog denyed both; but objected against his title as Shireff, seing both the *officium vicecomitis et coronatoris*, (*de quo multa* in the English laws,) are consistent in one place, and the one neids not interfeire with the other.

No. 471, *Eodem die*.—The Commission for plantation of Kirks having met, the
p. 160. Duke of Hamilton alledged, he knew not but they ware dissolved, or if they might warrantably fit; and some minding him of the King's proclamation continueing all Courts; he answered, Wher a thing was temporary to a Prince's life, (*verbi gratia*, the Excise, and Tunnage, and Poundage in England,) he doubted if the King's warrand could revive it.

No. 472, 5 *Martij* 1685.—Dick of Grange's cause with bailzie Thomas Hamilton,
p. 160. about Johnston of Sheins, is advised; and the Lords find a donator to ane

escheat liable to doe diligence for recovery of the rebells debts, by a special declarator like ane executor. But this point was not fully decided, for the Lords ware equall, 6 against 6.

Eodem die.—Ther is a letter from his present Majesty, anent the No. 473, 2 ships called the Patience and Palme-tree, of Sunderberg, (*de quibus* ^{p. 160.} *supra pag.* 136,) explaining his brother's letters, and declaring them lawfull prize, becaufe of ther double documents. This was procured by Sir William Bruce, then at London. And thus John Inglis advocat, *multam operam et oleam perdidit* in this caufe.

Eodem die.—Mr. Oliphant, and the other indulged Ministers, to the No. 474, number of 12, lying in prifon, (*de quibus supra pag.* [117],) give in a ^{p. 160.} petition to the Privy Counsell, craving the benefit of his Majestie's new Indemnity, they falling under none of the exceptions, being nather heritors, wodfettors, lif-renters, burgesfes, nor vagrant preachers, nor affaffinators. The Privy Counsell first declared, they ware included in the Indemnity, but would not liberat them, except they fand caution not to exercife ther miniftry privatly nor publickly, otherwayes to be banished. They represented, They had this offer before the Indemnity, and by ther principles they could not bind themselves up from ther duety; for *væ mihi si non evangelizavero*. But that was only *in ecclesiæ infantis primitivæ constitutione*, which is not our case now. Wheiron the Privy Counsell, the neixt day, re-confidering the Indemnity, fand ther Non-conformist Ministers ware not included theirin, becaufe it only extended to thoffe who ware below the degree and quality of burgesfes, &c. Now a preacher was, by his rank and office, above a burgesse, and it most not be understood precisely and literally of theffe mentioned, but of ther quality, and who may be reduktivly classed theirin. This was subtill, and thought not to quadrat with the favourable fence enjoyned by his Majesty, to be put on the words of his Indemnity; and this glosse would exclude James Stuart, and others we spoke of, *supra pag.* 154, as being above the degree of common burgesfes; and yet they fand Maxuell, a bailzie of the Regality of Paisley, (*de quo supra*,) lying in prifon for falsehood, free by this Act.

No. 478, 6 *Martij* 1685.—The Clerk-Register gets his fervant Angus Maccloud
p. 161. made Clerk to the Secret Committee of the Privy Counsell. The 2 Clerks of Counsell boar it the more peaceably, that ther ounes places, by the King's death, ware fallen, and the Register continued a great favourite; but they wrote up anent it to Secretary Lundy; but the Register justified himfelfe, and thought the Clerks should not have concerned themselves in what he had done. See reflections on this in my 8^{vo} Manuscript of Session Accounts, at this 6^t of March.

Ib. § 2. 7 *Martij* 1685.—The Chancelor and Treasurer parts from Edinburgh to London, conforme to the King's call, *supra* 2^{do}. *Martij*.

No. 481, 10 *Martij* 1685.—The Lords sate till it was near 2 a'clock in the after-
p. 162. noon, advising the improbation pershued by Roffe of Tillisnaught against Gordon of Midstrath. The Lords first committed both the parties to prison; and then, after tryall, fand the bond of thirleage (except as to 4 bolls of victuall yearly) was vitiat, and of *temporary* was made *perpetuall*. Wherupon they liberat Tillisnaught, and improved the paper as false, and detained Midstrath in the Tolbuith; and the nixt day voted if he should be referred to the Criminall Court, as art and part, or otherwayes accessory; but being chamberlayne to the Duke of Gordon, they fand he had not made use of it, but only fand it among his father's papers; and so *minime constabat*, who had falsified it. Yet they fyned him in 1000 lb. Scots of expences to the pershuar, and ordained him to ly in prison till it ware payed. The Arch-Bischop of St. Androis solisted with the President for Tillisnaught, being of the same firname. The King's Advocat was so displeased with ther lenity, that he threatned, tho' falsehood was growing dailly, yet he would never pershue one of them again, but liberat them all, that they might at last cheat the Lords themselves.

No. 482, 11 *Martij* 1685.—The Duke of Queansberry, Hy-Treasurer, as Con-
p. 163. stable and Captain of the Castle of Edinburgh, against Thomas Borlands, and the other heritors and possessors of the King's stables, in a reduction of ther rights; alledging, they ware annexed property, as part and

pertinent of the Castle of Edinburgh. The Lords, on Castlehill's report, find that the ground being designed the King's Stables in the defender's ounie infeftments, it is a part of the King's annexed property, unlesse the defenders can instruct that the same was legally dissolved, or document that ther ware other grounds called the King's stables belonging to the Castle of Edinburgh, seing the 176 A& Parliament 13, James 6^t, in 1593, annexes the King's stables to the Croune, which most be understood of thir, unlesse other stables be condescended on. But by the 204 A& in 1594, and the 11^t A& in 1633, its declared, that dissolutions shall not extend to the King's Castles, which will also include all ther pendicles. But the few of thir stables was prior long to thesse A&ts, viz., in King James the 5th tyme, by virtue of general A&ts of dissolution then standing.

12 *Martij* 1685.—Mr. William Home, late Minister at Jedburgh, No. 485, against his parishioners, is also reported by Saline. The Lords fand, ^{p. 164.} tho' he served to Januar 1682, yet he had no right to that half year's stipend from Mertinmesse 1681 to Whitsunday 1682, because he had deserted his charge for not taking the Test; and did not find he was *in pari casu* with one who had deceased then, whose reli& or nearest of kin would have claimed that halfe year.

Eodem die.—One of his Majestie's yauchts arrived at Leith, with 7 ^{No. 488,} or 8^t Scots prisoners, tane at a Conventicle in London, wherof 2 of them ^{p. 164.} ware students of divinity, the one called Mr. Patrick [Alexander] Sheills, (see him pannelled *infra* Jully [8 August] 1685;) the other called Mr. John Frazer, who was afterwards delivered to Mr. George Scot of Pitlochy, to be transported to New Jersey. I have seen a written testimony he has left, disfouning the King's Church-supremacy, &c. The rest ware taylors and other tradsmen, bigot in ther phanaticism. Some whispered, the main designe of the yaught was to bring doune armes.

Eodem die.—On a new list, supercribed by his present Majesty, the No. 489, Earle of Loudon's airs, the Lord Melvill, Cochran, Stairs, &c., are all of ^{p. 164.} new again cited, being 21, to this Parliament; and now Harden is added;

and the 15 of May is made the day of ther appearance. See the list, *supra* 131 et 132 pag.

No. 490, *Eodem die*.—The Barons and Freeholders of Mid-Louthian met, and p. 165. elect ther Commissioners for the inshueing Parliament; and they continue Reidfurd, choisen *supra* pag. 135; but in place of Sir John Coupar of Gogar, they nominat Sir John Maitland of Revilrig, 2^d son to the Earle of Lauderdale, tho' he had but newly bought thesse lands, and was but 3 dayes before infest, but this was enough to make him capable. The King's Advocat and Justice-Clerk should not have voted to this election; because, being Officers of State, they ware not capable to be elected; and to elect, and be elected, *sunt correlata, quorum uno sublato tollitur et alterum*.

No. 492, 14 *Martij* 1685.—The Earle of Lauderdale for proving my Lord p. 165. Aberdeen's concussion, *vide supra* pag. [140,] adducing fundry of the Lords of Session as witneses; it was objected, They ware Judges, and so could not be used as witneses. Answered, That in things transacted within doors, it was very ordinar to prove *per membra curiæ*; and they ware like ane inquest or affise, who might be both Judges and witneses. This being reported by Carse, the Lords demeured on it; so that Lauderdale was forced to misken them, the great men being now absent at Court who held them in aw; and this also appears by the following decision of 31st current.

No. 493, 17 *Martij* 1685.—Mary Hope, Earleston Gordon's Lady, competing with p. 165. Collonel Mayne, Ogilthorpe, and Cornuall, the 3 English donators of hir husband's forfaultors, on this ground, That hir right of lifrent was publict, in so far as it was reserved in the body of hir husband's infestment. Answered, The charter and seasin, which only makes a right publict, bears nothing of hir lifrent. Replyed, The Charter related expressly to the conditions and provifions contained in the proctry of resignation, wheirof hir joynture is one. The Lords, in respect of the favorableness of a joynture, fand this generall reservation æquivalent to a confirmation; and so preferred hir to the donator, who in strict law had much to say.

Eodem die.—At Criminal Court, my Lord Stairs, and others, cited to the Parliament and Criminal Court, are declared fugitives, for not appearing on the citation given them, (*supra pag.* [132].) Some alledged, the citation dyed with the King; but they opposed the A& of Sederunt reviving them. This certification was so far superceeded, as they were nather to be denounced, nor registrat till the 16 of May, that it might not be made ane pretence to hinder them to appear before the Parliament. No. 495,
p. 166.

20 *Martij* 1685.—Ther is a warrand from his Majesty, for demolishing and throwing doune the forts, strenches, and castles belonging to the late Earle of Argyle in the Hylands, which are to the number of 9, some of them pretty good houses: The fear is, least any Rebels within the country, or Argyle landing with forces from abroad, should seize upon them and fortify them; and to put garrisons in them would be expensive, and divert too many of the King's forces. To throw them doune by maisons ware very tedious, and to blow them up with gunpowder leaves the walls standing; and it ware a pity to demolish them. It was on Dunstaffnage, and some of thir houses that Argyle seized when he invaded us in May following, (*de quo infra.*) Some reported, That ther was a private order from his Majesty to the Lord Lorne, to undertake voluntar banishment; but this seemed hard, when he was convicted of no crime deserving exile. No. 500,
p. 169.

Eodem die.—Gray of Shives, having raised a reduction against the Earle of Aberdeen, on the head of circumvention and concussion, as to the rights of the lands of Meinzies of Balgownie, with ane exhibition; he, on a bill, gets the Earle stopped from deponing in the exhibition, till he should have witnesses present to confront with him, for citing of whom they granted a diligence; but declared, if my Lord ware not heir in the beginning of November nixt, they would then allow him to depone on a commission at home. No. 501,
p. 169.

21 *Martij* 1685.—The King's letter arrives, proroguing and continueing our Parliament from the 9th of Aprill to the 23^d of that moneth, that our so- No. 505,
p. 170.

lemnity might answer the same day with the King's Coronation in England. It was debate, If our Statfmen should stay and be present at the King's Coronation ; but it was found it would be a vast expence to put themselves in æquipage fuitable to the grandeur of the Nation they represented ; and therfor it was resolved they should not stay it. Some thought, in forme, our Parliament should have met on the 9^t of April, and adjourned themselves according to the English praëtise. But a proclamation, on the 23^d of March, at the mercat-crosse of Edinburgh, did the turn with us.

No. 512, 26 *Martij* 1685.—The freeholders of the Shire of East-Louthian met
p. 173. at Hadington, to elect Commissioners to the inshueing Parliament, wher ther arose a double election between Sir James Hay of Linplum and me : see it *infra* decided in the Parliament in my favours on the 28 of Aprill, with my objections against 4 that voted for him, prosecuted at more lenth in my 4^{to} Manuscript of the federunts and occurrents of that Parliament.

No. 515, 27 *Martij* 1685.—The Magistrats of Edinburgh, on a letter from the
p. 174. Chancellor, installs Doctor Sibbald to be Professor of Medicine in the Colledge of Edinburgh ; but the salary is not yet condescended upon. By the Canon Law a Churchman cannot get ane absolute ordination, but the Bischop-ordainer is oblidge to provide him with a benefice and livelyhood. Ther would be more use for a Professor of Law in Edinburgh, as to which the Advocats have made severall propofealls. Ther are now added to Sibbald the 2 other Doctors, viz., Pitcairne and Hacket.

2^{do}. News came to the Privy Counsell, that about 100 men, weill armed and appointed, had left Ireland, because of a searck ther for such malcontents, and landed in the West of Scotland, and joyned with the wild phanatiques. The Counsell finding, that they disappointed the forces, by sculking from hole to hole, ware of opinion it ware better to let them gather into a body, and draw to a head, and so they would get them altogither in a snare. They had one Mr. Pedan a minister with them, and one Isaack who commanded them. They had frightened the most part of all the country Ministers, so that they durst not stay at ther Churches, but retired into Edinburgh, or garrison townes ; and it was sad

to fee wholle Shires destitute of preaching, except in brughs. Wherever they came, they plundred armes, and particularly at my Lord Dumfreis's house.

3th. Ther comes a letter from the King to Duke Hamilton, as keeper of the Abbey, to have it in readinesse for his Commiffioner. Some thought, he was to be called up to attend the Coronation as a Knight of the Garter; but ther prefence may be difpenfed with, and he is become very tender and valetudinary.

28 *Martij* 1685.—[One] having given in a bond of 80 lb. Scots to one Douglas, a lad in Mr. Rory Mackenzie clerk, his chamber, to be regiftrat^{No. 518, p. 174.} againft one Wadell, who wrote in the fame chamber. Douglas gave him back his principal bond, and took a dollar from him in hand, with a promife of 3 more; but having kept a juft double of it, he gave the party furth ane extra&, who raifing horning thereon, Waddell difcovered that he was mafter of the principal bond. The Lords imprifoned them both, and ordained them to be carried to the Trone on the 3^d of Aprill, being a mercat day, at 11 a'clock, and both ther lugs to be nailed to it, and to ftand ther till 12 ftrike, with a paper on ther breaf, bearing ther cheatry, falfehood, and unfaithfulnes in ther truft; and then to returne to prifon, and Weddell to ly till he pay the debt; which ignominious fentence was accordingly execute. Thus little rogues are caught in the cobweb-net of our law, while the great ones break throw. Douglas alledged, That Weddell intyced him to a cellar, to take a chopin of ale, and ther, with the help of a dragoun, violently robbed the bond from him; but this appeared to be but a forgery.

The Clerk-Regifter upon this attempt and emergent, propofed to difjoyne that part of regiftrating bonds from his Deputie's office, (it having much hazard annexed theirto, throw ther being liable for ther mean fervants, who may be eafily brybed to fuch villanies,) and erect it in ane office by itfelfe, and exa& caution for it; this is to bring in a round fumme of money from him he placed theirin. But he having propofed it to the Parliament in June 1685, his Deputes gave him a compofition to continue it with them; and they are for to fubftitute one particular

trustee for that effect; which provocks some to registrat ther writs in inferior Courts.

No. 519, *Eodem die.*—The Advocat's servants having made some disorder in the Parliament-house, being the last Session-day of the Utter-house, the Lords remembring the late accident of the lacquayes and them, on the 27 of Februar last *supra*, they ware so irritate, that they caused imprison some of them; and ordained all the rest to be cited by a maister, and who ather did not compear, or did not purge themselves upon oath, ware to be fyned in ten shilling sterling the peice. And those that ware convict ware to be discharged the house, with a certification to any Advocat or Wryter who should receive them into ther service. Some of the Lords ware at that height of rigor, as to speak of pershueing them criminally on the 177th Act of Parliament in 1593; or banishing them.

No. 522, 31 *Martij* 1685, being Tuesday, and the last of the Session.—The Lords advised the cause of the creditors of Cromarty, how far they ware unconfirmed, and so sweipt away by the gift of the recognition theirow given to my Lord Register.

No. 523, *Eodem die.*—The Earle of Aberdean gave in a bill against Lauderdale's, craving, in regard he was going North, that no witnesses might be examined, at Lauderdale's instance, against him in the Vacance. The Lords refused the bill, but stinted the probation to be betuixt the 26 of Aprill and tent of May, when all parties will be in Toune at the Parliament.

No. 526, *Eodem die.*—At Privy Counsell, William Borthwick, Chirurgical-Apothecar, pershues Hay for breaking the Shireff of Eist-Louthian's arreistment, and ryotous away taking of the charter-kist and papers of Cairns of Pilmuir, his unckle, after his deceasse, tho' he was appearand air, and had a disposition, and had gotten them secured by warrand of the Shireff; which the Lords approved of, and ordained the papers to be reproduced, and reserved the consideration of the ryot to the conclusion of the cause.

VACANCE.

4 *Aprilis* 1685.—The Privy Counsell were upon the making of ane <sup>No. 527,
p. 176.</sup> Act, to cry doune the price of the French wine to 16 pence the pint; and on this occasion, complaints arose of the Wine Company, that they brought only home the cheapest and worst wines; and that they would casse and annull ther patent; but the underhand designe was, to procure the tacksmen of the customes ane ease, because lesse wine was imported.

8 *Aprilis* 1685.—The Duke of Queanberry, Hy-Commiffioner, the Earle of Perth, Chancelor, and Mr. Arthur Roffe, Arch-Bisshop of St. Androis, arrive at Edinburgh from London, having been only eight dayes by the way. The Privy Counsell ordered the Shires throw which the Commiffioner was to passe to wait upon him.

9 *Aprilis* 1685.—A Privy Counsell is held, wher a new commiffion <sup>No. 528,
p. 176.</sup> is produced, omitting none of the former Privy Counsellers, but only Collonell Grame of Claverhouse, because of the discords we have formerly marked betuen him and the Hy-Treasurer, and his brother. The pretence was, that having married in my Lord Dundonald's phanatique family, it was not safe to commit the King's secrets to him. George, heritable Prince of Denmark, was added; as also Sir William Bruce was made a Privy Counsellor, and Controller of the King's house. Ther was likewayes a new commiffion of Exchequer, wher Castlehill being omitted, meirly throw forgetfulness, it was sent up again to be reformed.

Ther ware 3 commiffions farder, viz., One to call all the Burrows of Scotland to ane account for ther common-good, which is the power of the old Hy-Chamberlayne; but finding that office was annexed to the family of Lennox, so that he could not assume its name with its badge, the golden key, he does the æquivalent by this commiffion. 2^{do}. A commiffion to fix and establish a settled Rentall of the King's property and casualty, that it may be knowen and ratified in Parliament. This may turne prejudiciall, and force men to produce ther charters, as Sir

William Purves did in the English tyme. 3^{tho}. A commiffion to examine his oun and the Treafurer-depute's accounts, wherof Claveris in pique is made one of the Auditors.

11 & 14 *Aprilis* 1685.—The Secret Counfell calls Sir William Scot of Harden and Park Hay, and examines them.

No. 529, 14 *Aprilis* 1685.—The Privy Counfell emits a Proclamation, commanding all the Members of Parliament to attend the Commiffioner up from the Abbey on horfeback; a Nobleman under the penalty of 1800 merks, &c. See the printed formula for Riding the laft Parliament in 1681. Ther is a Committee named to receive in the commiffions, and to rank and order the precedencies and forme of the Riding, viz., the Prefident, Register, &c. By wrong marfhalling them the Clerk-Register will get the more proteftation gold. The Nobility grudged that the Commiffioners of Shires have filver and gold mixed in the freinges of ther foot-mantles. The Barons answered, They made one Eftate in Parliament with the Peers, *et magis et minus non variant speciem*; and they have been in poffeffion of fuch foot-mantles.

No. 530, 16 *Aprilis* 1685.—Ther is ane A&t of Privy Counfell made, *in odium* of Claveris, and to ftir up the peeple to complain of him, (as was expected,) commanding all officers and fouldiers to pay ther quarters ere they remove, under the payne of cafheiring, and other fynes; and that they may be readily answered, and not extorted, the Shireffs are, conforme to the 3^d A&t of Parliament in 1681, to fet rates on hay, ftrow, and graffe. Yet many of ther quarters remain unpaid, for the fojors threaten the tennents, when they offer to exact payment, to be about with them another way.

No. 531, *Eodem die*.—The Convention of the Royal Burrows meits at Edinburgh; and ther Alexander Milne of Lithgow draws a faction to make himfelfe Præfes; but, being in Edinburgh, they found they could not paffe over the Proveft of the Toune wher it held. Then they deprived Sir James

Rocheid from being ther Clerk, who was dealing at leift to be keiped in as a conjunct; but they refused, and elected Mr. John Richardson, Toune-Clerk of Edinburgh, in his place, and did not so much as conjoyne his colleague, the present Proveft of Edinburgh's fone, with him. This was done to gratify the Treafurer.

Eodem die.—The late King's ftatue on horfeback, was erected and fet Ib. § 2. up in the Parliament Cloffe. It ftood the Toune of Edinburgh very dear, more then 1000 lb. fterling. Some alledged, It was wrong placed, with the tayll to the great gate and image of Juftice above the Parliament-[houfe] door. He is formed in the Roman manner, like one of the Cæfars, almoft naked, and fo without fpurs and without ftirrups, *ftapedes*; becaufe the old Romans ufed no fuch help, as appears from ther medaills, and Pancirollus his *Vetera deperdita et nova reperta*, with Salmuth's notes. The vulgar peeple, who had never feen the like before, ware much amazed at it. Some compared it to Nebuchadnezar's image, which all fell doune and worfhipped; and others foolifhly to the pale horfe in the Revelation, and he that fate theiron was Death.

20 *Aprilis* 1685.—The new commiffion of the Seffion and Juftice Ib. § 3. Court, from this King, was red, without making any change of the perfons; and they ware all again fworne and receaved.

21 *Aprilis* 1685.—At Privy Counfell, 2 patents ware produced and Ib. § 4. red, making Lundy and Tarbet Vicounts. Lundy Secretary is created Vicount of Melfoord, (this is a piece [of] land he hes got of Argile's forfaultor, as his locality of the money Argile was owing to Hamilton of Monkland, wherto Lundy had right as donator to the faid Monkland's forfaultor,) Lord Drummond of Gilfton. The Regifter was made Vicount Tarbet, Lord Maccloud and Caftlehaven: they fay he intended to affume the firname of Maccloud, his grandmother having been cheiff of the family of Maccloud of Herreis, tho' Maccloud of Lewis contends alfo. By this title he hes undoubted right to argue and vote in Parliament, which fome affirmed *qua* Regifter he had not.

No. 532, *Eodem die.*—The Laird of Grant, or Freuchie, gave in a bill to the
p. 178. Privy Counsell, (*vide* of it *supra* 17 Februarij 1685,) complaining, That the Lords of Justiciary deputed to Murray, had fyned him in 7000 mks. for his wyfe's absence from the Church; wheiras, 1^o. Ther was no law making husbands liable for ther wives irregularities. 2^{do}. It was not from a principle of disaffection, but from hir indisposition of health, and the vacancy of the church. 3^{tio}. As soon as the Privy Counsell emitted ther proclamation of the 4^t of June 1683, discharging unapproved Chaipians to be retained in families, under the pretence of fervants, Chamberlains or Phyfitians, without licence of the Bischop, or taking the Test, he then put Mr. Fraiser out of his house; and therfor craved a rectification of his sentence. The Lords refused his bill, on my Lord Kintore, who was one of the Commissioners who fyned him, his representation that the matter in the bill was untrue.

Ib. § 2. *Eodem die.*—Upon rumors of fears of Argile's landing, &c., the Privy Counsell ordaine 1200 Hylanders to be presently sent into the Westren Shires, under the command of Lieutenant Generall Drummond, and of Collonell Douglas, that what the King's forces had left, thesse caterpillars might eat.

OUR PARLIAMENT SITS DOUNE.

No. 533, 23 *Aprilis* 1685.—Our Scots Parliament fate doune, to hold pace with
p. 178. the English Coronation that same day of our Parliament. See the wholle federunts and journalls, with the Acts, passages, and occurrences theirin inteirly together, in another 4^{to}. Manuscript marked [], so that I shall not mingle any of thesse transactions heir, but refer *ut supra*, only each day I shall heir name the Acts that passed.

No. 534, 28 *Aprilis* 1685.—The Privy Counsell make ane A&t for putting the
p. 178. wholle kingdome in a posture of defence against the ennemies of the King and Gouvernement. The occasion of it was, some Skippers had come from Montrose and Borrowstounenesse, and deponed, That they being

lately at Rotterdam in Holland, they heard a report their of Scots ships fraughted for Scotland, loadned with armes and ammunition, and that the Scots Ministers ther prayed for the good successe of ther navy imployed in the cause of God. This was conjectured to be Argile, Monmouth, Lord Gray, and that desperat party, who ware now dryven to ther wits end; and as the last effort of nature, would attempt something by landing heir. Some concluded it to be a mistake, arising from this ground, that the Dutch commonly hyre stranger bottoms to carry arms and poudre, which they privily send to Barbary, and sell to the Turks at a good rate. But it proved no mistake.

Eodem die.—At Parliament, the Shire of Air is sent back to a new election. Pitmedden's commission for Aberdeinshire is preferred to Kemnayses. My election by the Shire of Eist-Louthian is approven, and preferred to Sir James Hayes. Then the Parliament's answer to No. 535, the King's letter; the Act in favors of religion; and the declaration, p. 178. offer, and annexation of the excise to the Croun, are all voted and past. See thir at large *ubi supra* in that 4^{to}. Manuscript, *pag. et seqq.*

Ultimo Aprilis 1685.—At Privy Counsell, Alexander Arbuthnot of Knox is pershueing the Vicountesse of Arbuthnot, and Sir David Carnagie of Pitarro, now hir husband, to deliver up to him, as nearest agnat past 25 years, (for my Lord Arbuthnot was but 22,) and as tutor at law No. 536, served to his brother's children, with ther writs, shee having lost the p. 178. tutory and custody by hir 2^d marriage. Alledged, 1^o. Some are within 7 years, and so ought to remain with the mother; others are past pupilarity, and so belong not to the tutor. 2^{do}. The Vicount, by a write under his hand, had ordained his children to stay with ther mother the wholl tyme of ther minority. Answered, *Esse* he had expressly appointed them to stay even after hir re-marieng, the law repudiated that provision as *contra jus et utilitatem publicam*; for shee being *sub potestate mariti*, could not have children *in sua potestate*, being herselfe *sub potestate alterius*; and this was so found by the Lords in Dury, 8^{vo} Martij 1636, Stewart *contra* Anderfon, and he was not *alioqui successurus*, and so might be trusted

with ther custody. The Lords having resolved to gratify Pittarro on the Lady Erroll's solistation, found, tho' Knox had the right of tutory, yet the mother, tho' re-married, had the right of custody, (which was a subtile distinction,) in respect of the father's enixe will and inclination; which they gathered from this, that in the same paper he declares, if shee marry again, shee shall lose ane additionall joynture he had given hir, but does not adject that clause to the tutory, that shee shall lose it in case of hir re-marriage. Thus the living expound the will of the dead as they please. In case they had been decerned to give up the bairnes, (as in law they should,) Pittarro was resolved to offer to aliment them at 300 mks. the piece, to force Knox to take them at the same rate.

No. 537, *Eodem die*.—At Privy Counsell, Ogilvy of Forglen pershues Tolquhon for diffamation, (*vide supra* thir parties pag. 174,) in making him the theiff and resetter of his silver cup, and insisting, after Forglen had sworne he never took it, (which was to rub the reflection of perjury on him.) Tolquhon being absent on the pretence of sicknesse, and his calumniousefnesse being clearly made to appear, the Privy Counsell fyned him in 20,000 mks., the halfe to the King's cash-keeper, and the other to the party, for reparation of his honor and dammages; and ordained him to crave the Lords of Session pardon. This was a severe sentence; for Tolquhon's action was only *civilis rei vindicatio*, and he was fyned in 1000 mks. already, by the Session, for dammages. [*Marginal addition.*] But on the matter Tolquhon's pershuit was theft, which, in a landed man as Forglen is, was no lesse by our law then statutorie treason, which mitigats the severity of the fyne.

2^{do}. John Campbell of Succo, on his suspition of converfing with Argile, is arreifted, and made prifoner, and his wholle papers feized upon and fighted.

No. 538, *Primo Maij* 1685.—At Parliament are past the two following A&ts, p. 179. 1^o. Anent citations in criminalls. 2^{do}. For compelling witneffes to depone in treason *sub pœna talionis*. Some members new come to the Parliament, take the Test.

3 *Maij* 1685.—A stri& sear&h is made throw the wholle præcin&ts of the Abbey of Halirud-house, on ane account from the West to the Commissioner and Chancelor, that Mr. James Rennet [Renwick] the feild-preacher, was lurking in Edinburgh, and in the Abbey, with some designe against them. Ther was nothing found nor discovered; however the guards ware doubled, both ther at Court, and within the Toune.

5 *Maij* 1685.—At Criminal Court, M'Ghie of Larg, and 2 of the name No. 539, of Ruffell, being heritors, are forfaulted in absence, for ther accession to p. 179. Bothuel-Bridge.

6 *Maij* 1685.—At Parliament are past; 1^o. The A& making the No. 540, defending the Covenant treason. 2^{do}. That husbands be liable for ther p. 179. wives absenting themselves from the Church. 3^{tio}. Porterfield of Duchol's forfaultor is confirmed, and his case statuted as treason in all tyme coming.

7 *Maij* 1685.—At Privy Counsell, all the vassalls and feuars of Argiles No. 541, Shire, having been cited in on the noice of Argile's being at sea, and p. 179. designing to land; ther compeired above 160 of them, the Counsell retained about 16 of the greatest as pledges; and in regard the rest of them could not find low-land nor burgesse-caution for ther peaceableness, they remitted them hame to my Lord Atholl's Depute, to take such caution of them as they could find.

Eodem die.—Noble of Ferme in Dumbartonshire is pershued, before No. 542, the Privy Counsell, *ad pœnam arbitrariam*, for imploying one William p. 179. Dougall, a drummer, to goe to Bothuel-Bridge. The libell was admitted to probation.

2. Montgommery of Skelmuirly, and his mother, are pershued for Conventicles kept by the father, now deceist, on the passive titles; (*Quæritur*, If this deli& should dy with the party?) and also by the mother. Alledged for the last, They being kept in his father's tyme, and the marriage now being dissolved by death, and the debt never being esta-

blished by a sentence *stante matrimonio*, as his father could not have been made liable, so nather he. But heir the marriage is not dissolved by his death, but his; and shee alledged, That any Conventicles then kept were by his husband's expresse allowance, and so shee could not oppose them; and therfor his joynture ought not to be affected, but the air.

No. 543, 8 *Maij* 1685.—At Parliament; 1^o Lanton's election in the Merse præferred. 2^{do} Strathmoir gets a decreit of præcedency before my Lord Louthian. 3^{tio} Ane Act for ingathering the King's revenues. 4^{to} Anent judicall confessions. 5^{to} Anent recusants to imbrace offices. 6^{to} Against Preachers and hearers at Field and House-Conventicles. 7^o The Act anent tailzies, and clausies irritant is debated, and continued till nixt dyet of Parliament. 8^{vo} 2 Committees named, one for Trade and the Mint, and the other for regulating the inferior Courts of Judicator, not yet regulated.

No. 544, 9 *Maij* 1685.—The Magistrats of Edinburgh renew ane Act of thers, injoyning all inhabitants to give in the names of their strangers lodging with them to the main guard, under the payne of 5 lb. sterling, and to be repute disaffected persons, because many disloyall people are reset; and it promises 5 lb. sterling to any discoverer and apprehender of such vagrant persons.

No. 545, 11 *Maij* 1685.—The Privy Counsell, on some news they got of Argile, Monmouth, Gray, &c., being at sea, and designing to land, commanded all the heritors of Scotland to be in readinesse, weill armed, to wait on the King's host, with 20 dayes provision, on 24 howers advertishment, whenever called; and the Militia regiments were ordained to rendezvous on the 19^t of May: Which, because it was the very day wheiron the English Parliament was to sit doune, some conjectured this preparation was all but a sham to boast them; but it proved otherwayes, as you'll see *infra* at the 14 of May. Some quarrelled, that the Duke of Gordon, a Papist, was trusted with the command of the Aberdein and Bamff heritors, and the Earle of Dumbarton, sicklike, made Lieutenant Generall; but see

remarks on it in my folio Historique Manuscript, in the description of Argile's invasion.

13 *Maij* 1685, A.M.—At Parliament; 1^o Lanton's protest against the Shire of East Louthian for the Merse, and my protestation in the contrary. 2^{do} The reference anent my Lord Register's hy-way at Royston. 3^{tio} The Act anent the 8^t moneths supply. 4^{to} The Test extended to all Protestant heritors. And at the *post meridiem* dyet of Parliament this day, ther past; 1^o The Act anent the quinquenniall præscription of arreiftments. 2^{do} The Act of interruptions and citations. 3^{tio} Anent the Justices of Peace's jurisdiction. 4^{to} A ratification of Hamilton of Monkland's forfaultor. 5^{to} Of Bailzie of Jervewood's forfaultor. 6^{to} Of Argile's forfaultor.

14 *Maij* 1685.—At night ane expresse came from the Bisshop of Orknay, at Kirkuall, that Argile, with 3 ships, touched ther; which put all in a great consternation.

15 *Maij* 1685.—At Parliament, Louthian and Roxbrugh's præcedency remitted to the King. 2^{do} The 6 pannells in custody are brought to the bar. 3^{tio} The King's letter, as a warrand for citing them all, is red, with the Act of Privy Counsell made thereon. 4^{to} The summons in Latin and English. 5^{to} The executions theirow, which the heraulds and witnesses verify upon oath; and the 16 absent pannells are called thrice at the door by Maiffers. 6^{to} The letters of relaxation are red *pro persona standi*. Ther lawyers craved a list of the witnesses names. Both relevancy, and probation, and ther defences, are referred to the Articles; and the King's Advocat takes instruments on the reading the dittay, &c. 7^o The Members of Parliament are exeimed from attending the King's host. It was now discourfed, how far *in causa sanguinis* the Lords of the Clergy should fit, reason, and vote on thir pannell's lives; which was also debate in the English Parliaments in 1679. (See printed papers on it beside me.)

2^{do} The news of Argile's being on the coast, moved our Statfmen to fend for the prifoners lying at Glasgou, and other Westren places, wher

it was suspected he would land, (as he truly did at Dunstaffnage first.) And on the 17 of May, there came in near 100 men and weemen prisoners, who were suspected[ed] for Conventicles, &c. And they are either to be delivered to Pitlochie, to carry to the Plantations in America, or to be sent North to Dinnotar Castle, (which the King was a-buying from the Earle of Marshell, to be a Royall prison like the Basse,) to be kept close there.

Ib. § 2. 17 *Maij* 1685.—The Countesse of Argile was secured in the Castle of Edinburgh, and Mr. James, one of his sons, with Lady Sophia Lindsay, his daughter with Balcarhouse, because by his means Argile had formerly escaped, and his brother, Lord Neill, was confined; all which was done that they might not joyne with him. Sundry burgeses of Edinburgh are also secured, as James Row, &c. Item, Henry Fletcher, Salton's brother.

Ib. § 3. 18 *Maij* 1685.—Argile's Manifesto, and Declaration of his intentions, in print, is come to the Privy Counsell, with the summons he had sent to his vassals and people, to come in and assist him. And accordingly Sir Duncan Campbell of Auchinbreich, with 200 men, went in to him, under the pretence he was bound by his charter to assist him; which cannot oblige him against the King, nor defend him from treason.

19 *Maij* 1685.—The English Parliament is done.

Eodem die.—For opposing Argile not only the heritors above 100 lb. Scots valuation, (as was by the proclamation *supra* 11 *Maij*,) but now, by another proclamation, all heritors, tho' within it, are commanded to goe out with the King's standard and Royall army, on horse or foot as they can; and these heritors within 16 or past 60, tho' exempted in person, yet are ordained to send out one well appointed and armed.

No. 548, 22 *Maij* 1685.—At Parliament, Sir John Murray of Drumcarne, one
p. 181. of the Lords of Session, is admitted Commissioner, as elected for Perth-

shire, in place of Hadden of Gleneagles, dead. 2^{do}. The Act for taking the oath of alledgeance and supremacy, by all whom the Privy Counsell shall require to doe it. The Act ratifieng the Plot is continued, and the records laid open to any to peruse who pleased. 3^{tho}. The libell of treason against Sir John Cochran, Sir Patrick Home of Polwart, George Pringle of Torwoodley, and Mr. Robert Martin deceased, and John Martin his sone, is read, and voted to be relevant to infer the pain of treason. 2^{do}. The probation is led, viz., for Sir John Cochran's accession to the conspiracy and plot, Alexander Monro, and the depositions of Monro, Sheephard, and Burne. Then the principall records of Parliament were read, anent the forfaitors of the Earles of Angus, Huntly, and Erroll, in the Parliament 1594, wheirby it appeared, (as also by the Earle of Gourie's in 1600, and of Robert Logan of Restalrig in 1609,) that the Parliaments then judged on notoriety, flight, denunciations, letters, and depositions of witnesses not present. This was to help the Parliament over Carstairs' case, feing he was absent. Then the King's Advocat summed up the probation against him as to the plot, and to make it a præparative against Cefnock, he put it to the vote, if the probation he had adduced proved him guilty, and it carried *affirmative*. But there is disparities betuen the cases.

Then the King's Advocat adduced Sir George Maxuell of Pollock, and Cunyghame of Craigence, as witnesses to prove the 2^{do}. article of his dittay, viz., That Sir John Cochran sought money from them to send to Argile after he was forfeited. And this being put to the vote, it was clearly proven *nemine contradicente*. Then the 3^d vote being stated, If the Parliament would inflict the payne of treason on him? This carried also in the affirmative. But the Archbishop of St. Androis, before the vote began, signified, That the Clergy resolved not to meddle *in causa sanguinis*, but protested it might not prejudice their priviledge to vote when his Majesty thought fitt. The Bishop of Edinburgh had a pretty discourse as to the Bishop's right of voting in capitall cases. Then the Dempster pronounced the doome of forfaitor against him; and the Lyon, and his brethren heraulds, tore his armes, and the trumpets sounded, and they renewed the same at the Croffe of Edinburgh.

Eodem die, post meridiem.—At Parliament, the Act anent the disposeall of vacant stipends was past. 2^{do}. The libell having been found relevant in the fornoon against Polwart, Torwoodley, and Martin, the King's Advocat now, *in modum probationis*, adduced first, Murray of Philiphaugh; 2^{do}. Walter Scot, late Earle of Tarras; 3^{tio}. Hew Scot of Gallowheills; 4^{to}. Repeited Comisar Monro and Carstairs depositions, with the pannell's being fugitive, and the notoriety of the fact. And it being stated in 3 severall votes, If proven against every one of them or not? they ware all found proven. Then they ware all put in one vote, If the pain of treason should be inflicted on them? And that being also past, the solemn formalities of forfaultor were heir used and repeited, as was done in the præceeding case of Sir John Cochrane. 3^{tio}. The Act in favors of the Lords of Session, exeiming them from taxations, was past.

No. 549,
p. 182.

25 *Maij* 1685.—At Privy Counsell, a proclamation is emitted, That no meall or oats be exported out of the kingdome during the tyme the army is in the fields, that they may not want necessar provisions.

Eodem die.—A Commiffion from his Majesty is red to the Earle of Dumbarton, to command our forces. *Nota*, He is Roman Catholic, and takes not the Test: his hazard is only his lifrent escheat, which if any attempted to feik, would be gifted to himselfe. If the penalty of the Act had been made treason, and declared irremissible, that had been more certain: but it was alledged, that incroached on the King's prærogative; and when a country is in combustion, Papist or any [other] may quench it.

2^{do}. Little of Libberton's Lady is imprisoned for harboring, &c.; but on his entering in prifon for hir, shee is liberat.

No. 550,
p. 182.

27 *Maij* 1685.—At Parliament, the Act formerly red anent entaylls or tailzies is past. 2^{do}. The Act approving the Narrative of the Plot, is continued. 3^{tio}. The Act of game, anent hunting and halking, is past, ratifieng the Secret Counsell's Acts. 4^{to}. The Act against stealling haulks or dogs is past. 5^{to}. Thomas Stewart of Coultneffe's libell is red; and the Advocat restricting it to 2 points, 1^o. His furnishing the rebels at

Bothuel-Bridge with meat and drink. 2^{do}. His refetting and taking back James Alexander, his gairdner, and other fervants who were in that Rebellion; and thus complexly it's found by a vote relevant. Then 5 witneffes are led, (wheirof one is a woman,) and, by a vote, the libell is found proven, and a fentence of forfaultor pronounced againft him, with the formalities *supra*; only the Lyon was not prefent, but Mr. Robert Innes his clerk officiats as his depute.

29 *Maij* 1685, is, by authority, obferved with fermons, canons, bon-fyres, folemnity at the Croffe, tho' the King whose birth-day it was, be dead; feing the [17] A& in 1661, and the 12 A& in 1672, ordains it to be obferved in all tyme coming, for commemorating the reftitution was then of the Monarchicall governement without bloodfhed, fo miraculoufly made in favors of thir Ilands.

30 *Maij* 1685.—At Parliament, a Commiffion fpoke of for trade with No. 551, England; and to advance this defigne, ane A& was brought in about our P. 182. manufactories, and to prohibite the ufe of all white laces and woollen; and the old manner of uplifting the excife is continued for three moneths longer.

2 *Junij* 1685.—At Parliament, 7 A&ts are paff; 1^o. Ane A& ratifieng No. 552, the opinion of the Lords of Seffion, finding it treafon to refufe to difounne P. 182. the late Declaration of War. 2^{do}. Of adjudication for fynes. 3^{tho}. Anent fea paffengers. 4^{tho}. Of citations to Circuit Courts by Meffengers or Shireff Officers. 5^{tho}. Ane A& ratifieng 2 A&ts of Parliament, and ane A& of Secret Counfell againft refetting, and not difcovering or not apprehending rebels. 6^{tho}. The commiffion for valuation of Teynds. 7^{tho}. Ane A& for inferting ane claufe in tennents tacks anent ther regularity.

3 *Junij* 1685.—The Privy Counfell by ane A& declares, That the fear of No. 553, captions for civill debts, fhould not be a fufficient excufe for any who ware P. 182. oblidge to attend the King's army; but fufpended all execution againft them, becaufe fome had tane fan&tuary in the Abbey, and pretended

they could not goe to the host for fear of their creditors doing diligence against them. (See this tane of 1^o *Julij infra*, when the war is ended.)

No. 554,
p. 182.

4 *Junij* 1684.—At Parliament, Sir George Monro is admitted a Commissioner for Ross; and Mr. Robert Fergusson is forfeited on the testimonies of West and Bourne, Englishmen. Then the following Acts passed; 1^o Ane Act ratifying the printed narrative of the late plot and conspiracy. 2^{do} Ane Act, that all the records and registers be brought in to the Clerk-Register, once every ten years. 3^{tio} The Act polling tenants, that they may relieve their masters of a part of their cess. 4^{to} Ane Act for modifying messenger's fees. 5^{to} Act discharging rendezvous of the Militia during his Majesty's pleasure. 6^{to} Ane Act disjoining my Lord Advocate and Register's lands from Ross, and annexing them to the Shire of Cromarty. 7^o Ane Act of Indemnity to the present Officers of State, Secret Committee, and Judges. 8^{vo} The continuation of the imposition for the Bridge of Innerneffe. 9^o The Act anent the easier uplifting of the Bishop of the Isles rents is delayed. 10^{mo} The Act against killing Ministers is continued to the next dyet. 11. Sundry fairs and markets are granted.

P. 183. *Eodem tempore*.—The Marquis of Atholl, Commander of the Highland forces at Innerary, against Argyle, by warrant from the King's Council, emits a proclamation, offering ane Indemnity to all the common soldiers who had joined with Argyle, provided they laid downe their armes and deserted his service; but this did not extend to the Heritors and Gentry with him.

P. 183. 6 *Junij* 1685.—The 2 prisoners taken from Argyle in Orkney, viz., Mr. William Spence, and Mr. Blair, arrive at Edinburgh. And the next day, being Sunday, there was a great fray and stir in Edinburgh, on the apprehension that Argyle being forced to leave the sea, by the King's men of war who were come up, he had landed in Cowell, and aimed to surprize Stirling; whereupon the Militia regiment of Edinburgh was instantly appointed to march away to Stirling.

8 *Junij* 1685.—At Parliament 2 A&ts are made ; one for incouradging No. 555,
planting and inclofing of ground ; and the other for fecurity of Bifchops^{p. 183.}
and Minifters, and againft affaffinations.

9 *Junij* 1685.—The Duke of Monmouth is, by proclamation at the No. 556,
mercat croffe of Edinburgh, cited to appear at the Criminall Court on^{p. 183.}
60 dayes, to anfwer ane indytment of Hy-Treafon. It moft be crymes
pofterior to his remiffion from the laft King in December 1683 ; and the
fee of Baccleuch was thought could not be forfaulted for his fault, his
Lady and children ftanding in the right of it, and he had only a lifrent
out of it. Monmouth's landing in England was not, at this tyme, yet
come to our ears.

Eodem die.—One of the Toune of Edinburgh's fojors, of Captain No. 557,
Patrick Graham's company, called Edward Atchefon, with his baginet^{p. 183.}
ftabs a violer named Watfon, becaufe he was ferenading in the night
tyme with his fidle in the ftreet, (contrare to ane A& difcharging it,)
and gave him ill words. He was imprifoned by the Magiftrats, and his
libell given him, and ane affife fummoned ; but my Lord Erroll compear-
ing, and claiming him by his jurifdiction in Parliament tyme, as Lord
Hy-Conftable, and they being both heard before the Commiffioner, and
Chancelor, the Magiftrats were forced to quite him. Erroll produced his
gift from King Robert the Bruce, to judge all criminall caufes happening
within 4 miles wher the Parliament or King's Counfell fits ; with bonds,
given in 1582, by the Magiftrats of Edinburgh, acknowledging his jurif-
diction, and accepting deputations from him. See this cafe at lenth in
S. G. Mck. Lord Advocat's Criminalls, title Jurifdiction of the Conftables,
pag. 367 et feq. See the report of Erroll's priviledges and *de Hoftilagiis*,
in my folio Manuscript A, folio [222], with the King's ratification thei-
rof in 1633. Wheiron the Toune of Edinburgh, for preferving their pri-
viledges, took a proteftation againft Erroll's deputes ; who protefted in
the contrare, and led probation by witneffes, becaufe his confeffion was
qualified, that he was provoked by calling him rafcall, and refufing to
goe to a Commiffion-officer. The witneffes clearly proved the fact ; fo

the affise returned him guilty, and then he was condemned to be shot to death in the Colledge Kirk-year, on the 17 of June nixt. Captain Grame, his maister, delt much and offered money for ane assythment to the widow, to get him of, but it would not doe.

No. 558, *Eodem tempore*.—By order of the Privy Counsell, the signall of the Fiery
p. 184. Croffe, is sent throw the west of Fyfe and Kinrofe, as nearer to Stirling, that all betuixt 60 and 16 may rise and oppose Argile and his forces.

No. 559, 11 *Junij* 1685.—At Parliament, 3 A&ts are passed ; 1^o Ane humble
p. 184. addresse to his Majesty, that Argile, nor his posterity, be not pardoned. 2^{do}. A commiffion of Parliament, to be named by the King, for dividing Argile's estate. 3^{tio}. Ane A&t, erecting a new office for registrating bonds and augmenting the Clerk-Register's dues. The A&t anent the Greenland whale fisching is continued.

No. 560, 13 *Junij* 1685.—At Parliament, 1^o The forfaultor of my Lord Melvill.
p. 184. 2^{do}. Of Montgomery of Lenshaw. 3^{tio}. Of Cefnock's, elder and younger, they having come in the King's will. 4^{to}. Many ratifications are past. At this tyme the Earle of Erroll gets back the Shireffship of Aberdein, formerly posselt by the Earle theirow.

No. 561, 16 *Junij* 1685.—Being *ultima dies hujus Sessionis Parliamenti*, the 16
p. 184. following A&ts passed, 1^o The Greenland fisching declared to have the priviledges of a manufactory. 2^{do}. A Commiffion and A&t, referring the 12 pannells not yet tried by the Parliament to the Justice-Court, giving them a Parliamentary power, to proceed without giving a list of the witneses, &c. 3^{tio}. Ane annexation of the wholle late forfaultors to the Croun. 4^{to}. Ane A&t annulling the conversions of the feu dueties of the estate of Argile into money, and annexing them to the Croun. 5^{to}. Ane A&t annexing Argile's haill offices and jurisdictions to the Croun. 6^{to}. A&t reschinding the regulation of Advocat's fees and salaries is put to the vote, approve, or delay ; and delay carried it. 7^o. A Commiffion to perfyte what is yet resting for regulating inferior judicatories. 8^{vo}. That

all in Orknay and Sheitland be cited on forty dayes. 9^o The A& in favors of the Bifchop of the Iles, for ingathering of his rents, is paff. 10^o The A& for fowing the 20 part of ther ground with peafe and beans in Aberdeanfhire. 11^o The A& for meafuring of myles. 12^o The A& for naming Curators to Sir William Primerofe's children. 13^o The A& for weighing bear and meall laid afide. 14^{to} Some ratifications, (wheirof my ounie of the lands of Fountainhall was one,) with fundry fairs, and impositions for upholding bridges. 15^{to} The A& *salvo jure*. 16^{to} The A& of adjournement. Then the Commiffioner's fpeech, and the prayers faid by the Bifchop of Edinburgh.

Eodem die.—At Privy Counfell, Mr. John Meinzies advocat is im-^{No. 562,}
prifoned on this ground, that having come furth to the King's Hoft as^{p. 184.}
Heritor of Cambo, with the Mid-Lothian gentlemen, under the command of my Lord Lauderdale, when the 20 dayes they were called out by the proclamation ware exfpired, he not only left his ftandart without leive or forlooff from his Captain, but openly red the printed a&, and theirby induced fundry heritors to come away without leive; which was fedition and mutiny.

19 *Junij*.—Early in the morning, the news came to Edinburgh, that Argile was taken prifoner. They ware refolved the night before that to have regimented and armed the Colledge of Juftice; but this put a ftop to it, as no more neceffary. And, on the 20 *Junij*, Argile is brought in captive to Edinburgh Caftle. See this affair at large in my Hiftorick Manuscript in this moneth.

Eodem die.—Monfieur Francis Loufmeau du Pont, late minifter at^{No. 563,}
Sauzé, in the province of Poi&tou in France, a Hugonot minifter, forced^{p. 184.}
to flee his native cuntry for perfecution, gives in a bill to the Privy Counfell, on the 7^t A& of Parliament in 1669, craving liberty to preach to the French Proteftants heir, or any others whoffe heart God fhall ftir up to beftow charity on him, ather in the Lady Yefter's Church or elfewheir. The Privy Counfell remitted him to the Bifchops, to examine him, if he was qualified and orthodox.

No. 564, 24 *Junij* [1685.]—The war being now ended, they take of the restraint
p. 184. they had formerly put on the exportation of meall, oats, and malt; and they now discharge the 5000 bolls of meall they had allowed to be imported from Ireland as no more necessar.

No. 565, *Eodem die*.—The Privy Counsell emitts a proclamation against the re-
p. 185. setting of any of thesse fugitive rebels who ware with Argile, and offering rewards to thosse who apprehends or brings them in, dead or alive; viz. for Sir John Cochran, Polwart, &c., 1800 mks; for the Preachers with him, such as Mr. Archer, &c., 1000 mks; for others, 500 mks. This is the *Bannum Imperiale*. See Gayll, *De arrestis pignorationibus et pace publica*. One Grame Elphiston of Lapnefs, in Orknay, and Mr. Gilbert Elliot, ware forgot in this proclamation. It calls Argile “that arch and hæreditary traitor,” (because his father, and some ancestors long ago were forfaulted,) and termes Richard Rumbold, that bloody miscreant. A sone of my Lord Neill Campbell’s is also included in this proclamation, and a reward put on his head; but it’s alledged, he was tane and detained prisoner against his will. So he most ather have a remission, or a new A&t to secure him.

No. 566, 25 *Junij*.—At Secret Counsell, Malcolme Macalla, skipper in Leith,
p. 185. pershues John Reid, also skipper ther, for beating and mutilating him, in taking him by the privities, and tearing them so that he pulled out one of his stones, when they ware fighting lately in the Links of Leith. In this complaint his wife was most interestet. Reid denyed the fact, alledging that fact might be given him accidentally in the strugling; and founded on the defence of *res hæctenus judicata*; it being committed in Parliament-tyme, and judged by Erroll’s deutes as constable, and fyned in 100 dollars, and wheirof he had obtained a discharge. Answered, That sentence was meirly collusive, and patched up, and was only *ad vindictam publicam*, being only pershued by the proctor-fiscall, and not by the party greived as now: (see the Advocat’s Criminalls, pag. 443;) and *esto* the Constable had the power of judging *privative*, yea of repledging from all other Courts, even the Privy Counsell itselke; yet if he doe not punish

proportionally, and with commenfuration to the deli&t, the Privy Counfell may review it. And heir it is a moft atrocious and inhuman cryme, and made capitall in weemen *jure Mofaico*, Deuteronomy, cap. xxv. ver. 11; and he was in ufe to doe it to others, and brag he had a trick to lay the ftrongeft man on his back. Reid had alfo a re-convention againft him, for proving Macalla was the firft agreffor; and both libells are admitted to probation. Which being advifed on the 2^d of Jully, they fyned Reid in 3000 mks, becaufe they find the fact proven againft him; and ordaine him to ly in prifon till he pay it: fo he was neceffitate to com-pone with Maccalla ere he could be liberate.

Eodem 25 & 26 Junij 1685.—[At Privy Counfell,] Doctors Balfour, No. 567, Stevinfon, &c., give in ther report, that they thought Rumbold was in p. 185. hazard of death by his wounds; fo the Privy Counfell ordained the Criminall Court to fit on him the nixt morrow, that he preveen not the publick execution by his death.

Thus, on the 26^t, the faid Richard Rumbold malfter was brought to his tryall. His indi&tment boor, That he had defigned to kill the late King at the Ry, or Hogfdon, in his return from Newmarket to London, in April 1683. But, in regard he pofitively denyed the truth of this, (tho' fundry had fworne it againft him in England,) the King's Advocat paffed from that part, leift it fhould have dif-paraged or impaired any thing of the credit of the faid Englifh plot; therfor he infifted fingly on this point, That he had affociat himfelf with the late Argile a forfault traitor, and invaded Scotland, and rifen in armes, and taken fundry forts, and made war, and commanded as a Collonell to that party which fought at Ardkinlas with Atholl's men, wher 2 or 3 ware killed, contrare to the 5^t A&t of Parliament in 1661, making theffe deeds treason. All this he confeffed and figned; and being interrogat, If he was one of the masked executioners on King Charles I.'s fcaffold? he declared he was not; but that he was one of Oliver Cromwell's regiment then, and was on horfeback at Whytehall that day, as one of the guard about the fcaffold; and was at Dumbar, Worcefter, and Dundy, a Lieutenant in Cromwell's army; he faid, that

James Stewart advocat told them, Argile would ruin all ther affair by lingring in the Iles and Hylands, and not presently marching into the inne country, such as Galloway, &c.; wheirin he had proven a true prophet, but might see it without a spirit of divination. And being asked, If he ouned the present King's authority? he craved leive to be excused, seing he needed nather offend them, nor grate his own conscience; for they had eneugh to take his lyfe besyde. His rooted, ingrained opinion was for a Republick against Monarchie, to pull which doune he thought a duety, and no sin. And on the scaffold he began to pray for that party which he had been ouning, and to keep the 3 metropolitan cities of the 3 kingdomes right; and if every hair of his head ware a man, he would venture them all in that cause. But the drums ware then commanded to beat. Otherwayes, he carried discreetly eneugh, and heard the Ministers, but took none of them to the scaffold with him. The affise, consisting most of Englishmen in toune, (like a *medietas linguæ* given to strangers by ther law,) found him unanimously guilty. So he was sentenced to be execute that same afternoon; whither he was drawn in a hurdle, (for laying aside the ignominy, he was not able to walk, throw the wounds he got when he stoutly resisted his taking by Raploch and his men.) Then, being hoized up in a pilly, and hanged a while, he was let doune scarce fully dead, and his breast ript up, and his heart pulled out, (as was done with Rathillet,) and carried on the point of a baiginet by the hangman, crying, "This is the heart of a bloody Traitor and Murderer;" and then throwen in a fyre. After this, he struck of his head, and carried it so also; then cutted him in 4 quarters, which ware affixed at Glasgou, Dumfries, New-Galloway, and Jedburgh, and his head put on a pole at the West-Port of Edinburgh; but by order from the King, they ware afterwards carried to London. He was certainly a man of much naturall courage. See more of this in my History.

No. 568,
p. 186.

29 Junij 1685.—The Privy Counsell having met, and in obedience to the King's letter ordaining to execute the sentence of death against Argile, within 3 dayes after the receipt of his, having deliberated on the manner, (*de quo* see large remarks in my folio Historique Manuscript,

page 100,) they ordaine him only to be headed, and his head affixed on the Tolbuith of Edinburgh; which was accordingly done the nixt day, being the 30 or laft of June 1685. And fo ended that great man, with his family, at that time.

Primo Julij.—We had the news that Sir John Cochrane, and his fon Ib. § 2. Waterfide, and one Dumbar a furgeon, wer apprehended at Gawin Cochrane his unckle's houfe, called Cochrane, near Kilbarchan in Renfrewfhire, difcovered by Gawin's wife out of revenge, becaufe fhee was fifter to Captain Clelland, who in the rebells retiring was flain by them, he being on the King's party. Sir John, his fon, &c., ware brought in to the Tolbuith of Edinburgh, on the 3^d of Jully, being ignominiously conducted thither, bound and bare-headed, by the hangman.

Eodem 1^o Julij.—A proclamation is emitted by the Privy Counfell, No. 569, p. 186. revoking ther protection they had given on the 3^d of June *supra*, by ther A&, againft all captions, that none might be then hindred from the King's hoft; becaufe that expedition was now over.

Eodem tempore.—On a complaint given in by fome Englifhmen No. 570, p. 187. againft John Inglifh late Advocat that he had uplifted ther effects in Scotland by vertue of Fa&ories, without giving them any account; the Privy Counfell ordained him to find caution, or elfe goe to prifon.

2^{do}. Adam Hepburne of Humby, and his brother Randolfstoune, have Ib. § 2. mutuall complaints againft one another, at Privy Counfell, anent cutting of the wood, and particularly the planting on the brae-face at the back of Humby houfe, which Humby was felling, and his brother oppofed it. This was fubmitted.

6^{to}. *Julij*, is the fight at Bridgewater, wher Monmouth was defeat.

7^o. *Jullij*.—Monmouth and Gray are tane prifoners; and Monmouth is headed on Towerhill upon the 15 of Jullij. See all this affair at large in my Historick Manuscript.

Ib. § 3. *Eodem die*.—The English packet coming to Edinburgh, was twice stopped and robbed about Anvick. Some conjectured it was Polwart's doing; others, that it was by Sir John Cochran's freinds, leift ther should have been any warrand from the King by thesse packets, to have execute him; that so the Earle of Arran might have leifure to informe the King what Sir John could discover, and so obtain a countermand. Sir John's son, Waterfyde, at his first taking, was of the wild Cameronian principles, wholly disowning the King, but his Father feimed more timorous and penitent. Others thought it was a clandestin stratageme of the Hy-Treafurer's, who was now beginning to be jealous of the Chancelor, to find out what secret correspondence he was keiping with his brother Secretary Melfort, and his oun open ennemy.

No. 571, *Eodem 9 Jullij* [1685.]—The Privy Counsell emits a proclamation, p. 187. taking of the embargo of ships, laid on during Argile's invasion, allowing the freedome of trade as formerly, providing they be answerable to carry no passengers but such as hes passes, &c.

15 *Julij*.—Monmouth headed, *ut supra*.

No. 572, *16 Julij*.—At the Criminall Court, conforme to the Parliament's p. 187. reference, Denholme of West Sheills, and Mr. Gilbert Elliot, are found guilty of treason. The probation against them are, Sir John Cochran, (who first excused himselfe as unworthy to bear witnesse in any case, in the circumstances he stood, of a forfaulted traitor; but the King's Advocat told him, that any were capable *dictionis testimonii* against Rebels,) Dumbar, and Blaiketer, the surgeons tane with Argile, &c. The crymes proven ware, Their converfing with Argile and other rebels, and their being actually in armes. They are both forfaulted.

No. 573, *Eodem 16 Jullij*.—At the same Criminal Court, Mr. William Spence p. 187. late Chamberlayne to the Earle of Argile, and Stewart younger of Coltnesse, being tane, the first in Orknay, and the other after Argile's defeat, are arraigned as traitors; and Sir John Cochran, Blacater,

&c., are adduced as witneffes, befide ther oun confessions of ther being in Argile's company when he came to invade Scotland. They are forfaulted, and condemned to be hanged on the 22^d of July, at the Croffe of Edinburgh. But on my Lord Dumbarton, Generall, his interceffion, they ware repreived by the Secret Counfell, and continued till the day of September nixt, with fome defigne of making Spence a witneffe againft my Lord Stairs and others; and fome faid he would be fent for to London, as weill as Sir John Cochran, and Collonell Ayliff, to make a fuller difcovery of this Plot, and who had underhand been concerned in it.

Eodem tempore.—[At Privy Counfell,] Mr. Charles Campbell, Argile's fecond fon, being taken lying fick of a fever in Argilefhire; and the Marquis of Atholl, by vertue of his Jufticiary power, refolving to hang him at his father's gate at Innerairay, tho' in a fever; by interceffion of fundry ladies, (for it was faid he was married to Lady Sophia Lindfay, Balcarhouffe's fifter, who conveyed his father in December 1681, out of Edinburgh Caftle,) the Privy Counfell ftopped it; and fent for him to be brought in prifoner to Edinburgh. His brother Mr. John Campbell, with the Lord Neill Campbell's eldeft fon, whom they had forced to joyne with them, finding they could lurk no longer, came in weemen's riding cloaths disguised to my Lord Dumbarton, and falling doune at his feet, difcovered themfelves; who was fo generous, that he figned ane order to make them prifoners in Stirling, with the liberty of the wholle Caftle, and trusted them with the carrieng of it without any guard. The Secret Committee grudged at this power my Lord Dumbarton took.—If any thing can extenuate treason, a fone's joyning with his father does it, efpecially being unable to act, as Mr. John was. One Mafter Griffith, a Prefbyterian minifter's fone in England, had been with Argile, and was alfo brought in prifoner.

Eodem 16 Jullij 1685.—At Privy Counfell, Mr. Robert Deans ad-
 vocat perfhues Robert Walwood merchand in Edinburgh for a ryot,
 in poinding his houfe for a fumme, tho' he had offered the fame to him

judicially; and tho' he counted doune the money to him the tyme of the poinding, to be given him on a fufficient difcharge, he being only tutor to a minor, his brother Harie's fon; yet they carried it away to the Croffe, and poinded it; wheras *pæcunia numerata* is not apprifeable, but *valet feipfum*. Alledged, The principall and annuells ware only offered, and not the expences. The Secret Counfell, becaufe of the extenuations, recommended it to the Prefident of the Seffion to fettle them; fo he caufed Mr. Robert paffe from his perfhuit on a valid difcharge.

No. 575, *Eodem die*.—At Privy Counfell, ther is an A& injoyning a Thankf-
p. 188. giving to be keiped throw all Scotland, for the late defeat of Argile and Monmouth, on the 23^d of Jully, in the dioceffe of Edinburgh, and on the 13th of Auguft for the reft of Scotland; which was accordingly done by preaching in the fornoon, and bells, canons, and bonfyres at Edinburgh in the afternoon.

No. 576, 20 *Jully* 1685.—The Privy Counfell publifh ther proclamation for
p. 188. fecuring the peace of the Hylands, permitting *medio tempore* till farder order, the Commiffion of Jufticiary formerly given, and empowering them to cognofce on any deprædations the Hylanders have made, during the tyme of this laft Hoft againft Argile. This will not extend, I think, to reftore *quæ licite capta funt jure belli*.

No. 577, *Eodem tempore*.—The Bifchop of Edinburgh procures a letter from
p. 188. the King to the Toune of Edinburgh, requiring them to take 20,000 mks of the bygane annuelrents of Muidie's mortification in ther hands, and therwith build a lodging and chappell to the faid Bifchop; it was in the Hy-Commiffioner's instructions to the laft Parliament, but was ftopped ther: fee it in my 4^{to} Manuscript of my Journalls of that Parliament, marked . . . page . . . This being represented to his Majefty as ane inverfion of Muidie's pious donation; yet the Bifchop's freinds prevailed fo far as to procure a new order from the King, that till the houfe ware built, they fhould pay him the annuell of that fumme yeirly, viz. 1200 mks, which will doe more than pay 2 houfe maills.

23 *Jullij* 1685.—At Privy Counsell, ane A&t is made, ratifieng all former ones anent hy-wayes, bridges, ferries; and particularly, that A&t of the 4^t of June 1683; and of new adds that the Justices of Peace and Commiffioners of Excise fhall be liable if it be neglected. No. 578,
p. 188.

2^{do}. They make ane A&t renewing former ones anent weights, metts, and meafures; and particularly that of the tent of March 1682, and fynes thoffe who fell or buy corne without meafuring of it, and declares the Linlithgow measure to be the ftandart, but prejudice of any metts betuen mafter and tennent.

Eodem die.—The Thankfgiving was obferved on this fyde of Forth: fee it injoyned, *supra*, pag. [188.]

24 *Jullij* 1685.—The Privy Counsell emits a proclamation, that who- ever have bought or refet any of the armes or ammunition lately brought within Scotland by Argile, or his accomplices, that within a moneth, within all hyeft pain, they re-deliver them in to the Caftles of Edinburgh and Dumbritton, to ferve the King, and that they may not afterwards be ufed by Rebels. The Hy-Treasurer fends back the armes fent doune by the Englifh merchands from London, as both dear and infufficient. No. 579,
p. 189.

Ultimo Jullij 1685.—The King having called over the 3 Scots Regiments in Holland to England, to affift him againft Monmouth, and they being now on a dry march, many of the common fojors deferted, and run away with their Officer's cloaths, money, and armes; and after they had been at the expence of taking them on. Therfor the Privy Counsell, by an A&t, difcharges any, and efpecially the Commanders of the ftanding forces in Scotland, to receave or take in any of theffe runaways and deferters, without paffes from their commanders, and to keip them prifoners till they be re-delivered to theffe Captains feiking recruits. No. 580,
p. 189.

3 *Augufti, feu fextilis*.—A warrand comes from his Majefty to fend up Rumbold the Englifhman's head and quarters to England, (*vide supra*, pag. 186,) to be affixed at London, whair he was beft knowen. No. 581,
p. 189.

No. 581,
p. 189.

5 *Augusti* 1685.—Some of the common prisoners, and others, Hylanders, tane with Argile, are, by the Privy Counsell, ordained to be delivered to Mr. George Scot of Pitlochy and others Planters in East New Jerfie, Jamaica, &c.; but confidering that some of them ware more perverse in mincing the King's authority then others, they ordained theſſe, to the number of 40, to have a peice of ther lug cut of by the hangman; and the weemen difouning the King to be brunt in the ſhoulder, that if any of them returne, they might be knowen by that mark and hanged; which ſeverity was performed this day.

No. 582,
p. 189.

6 *Augusti* 1685.—At Criminall Court, 11 or 12 priſoners are pannelled, ather for ther diſloyall principles, or ther being with Argile, viz. Mr. Thomas Archer miniſter, to whom a phyſitian and chirurgian being ſent to priſon, they declared on ſoull and conſcience he was raging of a fever, and ſo not able to be brought to the bar; and therfor continued his condemnation for ſome dayes.

2^{do}. Mr. Alexander Sheills ſtudent of Divinity, ſent doune from England by the King laſt winter, and was before the Articles of Parliament; he, after much velitation, at laſt conſented to ſigne the abjuration of theſſe treaſonable principles of riſing in armes, &c., but declined to ſwear it; which is conforme to the 23^d A& of the laſt Parliament in 1685, not mentioning ſwearing. The Anabaptiſts in Germany, in the Boors' war, was tryed with the ſame Formula, if they ouned ther Princes, yea or no; but it ſhould be only in *ſtatu belli*, (vide *ſupra*, pag. 108.) Sheills would have entred ane proteſtation, that he ſigned it only in ſo far as it was conſiſtent with his duety; but this was utterly rejected, and he required to doe it ſimply. Then he complained, that the only liberty of a ſubject being that of the freedome of his judgement and thoughts in controverted caſes, this ſhould be retrenched; yet, ſeing authority required him, he was content to declare he ouned the preſent King, and that it was unlawfull to raiſe war againſt him, or to aſſaſinate his adhærers; yet a man might declare many things he could not ſwear; and he ſaid, tho' he was a Preſbyterian, yet he was againſt the impoſition and preſſing of the Covenant itſelfe; and, at laſt, he ſubſcribed the ab-

jurament; but in regard he had formerly retracted his taking the said abjuration, and said he was forced, it was marked now that what he had done was voluntar; they were resolved only to banish him.

Then ther was 3 or 4, viz. Cunyghame, Jackson, and Edward Stit, (who had in a mad fit proclaimed the Duke of Monmouth King,) who ware so wise as to oune the King, and abjure ther principles; and so ware remanded to prision, that they might apply to the Privy Counsell to obtain to be banished.

The rest of them, viz. Campbell, Stoddart, Ruffel, Mathew, Bryce, &c., being ather obstinat in ther principles, or unclear to disoune the lawfulness of rising in armes, and the Declaration of war: or it being proven against them by witnesses, that they ware with Argile, (tho' the pannels alledged they ware forced by him,) they ware remitted to the knowledge of ane affise, and, by ther verdict, ware returned guilty of treason, and sentenced to be hanged on the 14th of August. But some of them being better adviced, and ready now, on the prospect of hanging, to renunce ther disloyall opinions, positions, and principles, it was expected the Privy Counsell would commute ther punishment into banishment to the Plantations. Some of thir, sentenced to death, had got ther ears cropt the day before, (*vide* 5th Augusti,) which seemed to make it *res judicata*, that they could not be pannelled for ther life, as *Ant. Matthæus de criminibus* teaches, page 910, *et seq.* But 1^o, It was said, they had thronged in with the rest, after they had got ther indytments for treason, and concealled it. 2^{do}, Since that *pœna* was inflicted, they had reiterated ther guilt by refusing to oune the present King; tho' indeed they only shifted the quæstion, asserting they owned all kingly authority in the generall; and when they ware put to disoune that Declaration of war, they said they disowned all murder, and yet would not disoune that paper in particular. And Stit said, He knew not if he was our King, because new Kings used to be crowned, and then grant goall-deliveries to prisoners, and pardons, which they had not yet seen. On the 12 August, 4 of thir pannells were hanged; and Mr. Archer being recovered, was then sentenced, and hanged on the 14th of August.

No. 583,
p. 190. *Eodem* 6 *Augusti* 1685.—Campbell of Cefnock elder and younger are liberate out of prifon, on a remiffion paff by his Majefty for ther lives only, but nothing referved to them or ther creditors of ther fortunes; only they had Queanfberry the Commiffioner's promife of fome fmall allowance out of ther eftate. See them re-imprifoned, *infra*, 4^{to} O&obris.

No. 584,
p. 190. 11 *Augusti* 1685.—The Privy Counfell, getting information that the freinds and Chamberlayns of thoffe who ware forfaulted and denounced fugitives for treason, ware cutting and felling ther woods on the annexed lands, and difpofing on their moveables, in defraud of the King and his Fisk, thinking, fince they got no more, they neided not be grudged theffe fmall cafualities; they emit a ftri&t proclamation againft both buyers and fellers under the pain of thift and refet.

2. Likeas the Hy-Treafurer and his depute, nominats Chamberlains to all the forfaulted and annexed eftates, with power to goe and intromit with this cropt for the King's ufe; and, accordingly, John Trotter merchand in Edinburgh, is appointed to uplift Polwart and Torwoodleyes eftates, and gets 1000 mks of falary; and Hew Wallace, Craigie's bailzie, who was tampering with the witneffes againft Cefnock and Crawfordton, are conftitute Chamberlains for Cefnock's fortune, &c.

No. 585,
p. 190. 14 *Augusti* 1685.—At Privy Counfell, ane A&t is paff in favors of the cloath manufa&tory at New-milnes, difpenfing with the late A&t of Parliament made in 1685, difcharging all woollen cloath to be worne, conforme to the power by the faid A&t referved to the Privy Counfell, and difcharging all Englifh cloath; providing the faid manufa&tory be able to furnifh the fouldiers, and others, on 3 moneths advertifhment.

2. Then on the 11 of September, they explain and extend the power they gave them to feize Englifh cloath, filk stockings, gloves, &c., to breaking up of doors, chifts, or others, wher they fufpect theffe prohibited goods to be hid.

No. 586,
p. 191. 18 *Augusti* 1685.—The Hy-Treafurer parts for London.

Eodem die.—The Earle of Calander being lately deceased, and Mr. Alexander Leviston, 2^d sone to my Lord Lithgow, laying clame as heir of tailzie, the Privy Counsell ordains the Charter-kift and evidents to be sequestrat for his use, tho' the last Calander had granted a disposition in favors of Lord John Hamilton, the Duke of Hamilton's 2^d son; and ordained James Hamilton wryter, and others, to exhibite on oath all papers, (except thesse in favors of Lord John,) and to discover if he knew wher the rest ware lying. No. 586,
p. 191.

Eodem tempore.—Arrived the 2 witneses against Salton and Monmouth, viz. the Brandenburger and Mr. Bruce, in one of the King's yauchts, at Leith; and Sir John Cochrane and his son, with Ayloff, ar tane to London in the same, where Ayloff, on the 30 of October, is hanged. See all thir at large in my Historick Manuscript, page 117.

21 *Augusti* 1685.—At Criminall Court, Mrs. Charles and John Campbell, sones to the late Argile, and the Lord Neill Campbell's sone, were pannelled, and forfaulted on ther oun confessions, that they ware present with Argile in his Rebellion. Notwithstanding wheirof, the King is so favorable to them, that he spares ther life, and ordains them only to be banished, on ther bond never to retorne again under the payne of death. Mr. Charles affirmes, Sir Ewen Camron of Lochyell, (whosse party, *supra*, had killed some of the Perthshire gentlemen,) was keeping secrete correspondence with Argile his father. No. 587,
p. 191.

2. The Earle of Balcarhouse is sent to Galloway, and the other Westren Shires, with a Commiffion of fyre and sword against the resettlers of thesse rebels; tho' they pretended for their excuse, that they ware in hazard of ther life for reveilling it, if they stayerd their. And, accordingly, a base proditorious murder was committed at Lefmahagow, on one Mark Ker, for being a taker of Rumbold. See it in my Hiftory.

Eodem tempore.—Hay of Park is liberat on caution; he was pannelled before the Parliament, and remitted by them to the Justice-court, for being on the late conspiracy: But they had no probation against him No. 588,
p. 191.

but Philiphaugh, who said, he found he knew the word and signe of that plot. See this *alibi*.

2^{do}. Whytford of Blairquhan is also put out of prison upon caution: his dittay was, that some rebels had sheltered a night in a peise-stack in his barne-yard. This was called reset, tho' he declared he knew nothing of it.

3^{tho}. Mr. Spence's day of execution approaching, it was prorogate; and it was thought he would get a remission, to bear evidence against my Lord Stairs and others.

4^{tho}. Sir George Drummond, Provost of Edinburgh, breaks, and runs to the Abbey for debt, the first Provost that, during his office, has broke in Edinburgh; yet some Mairs of London, during their Majorality, have broke. There were sundry complaints against him for meddling with the Town's common good; as also for taking 3 or 4000 marks to himself for putting Mr. William Henderson into the præcentor's place in the Hy Church; tho' the Bishop of Edinburgh also claimed it as his Cathedral kirk, and sought an acknowledgment; afterwards the Chancellor got Sir George a protection from the Privy Council for a month, under the pretence that he was cited as a defender in a riot, perjured against the Magistrates of Edinburgh and their constables.

No. 589, 2 & 3 *Septembris* 1685.—At Criminal Court, Mr. Rory Mackenzie of p. 191. Dalvennan advocat perhues Sir Archbald Kennedy of Cullayne, and others, for attempting to assassinate him, and convoking the liedges against him, being Bailzie of Carriſt, and bearing guns and other forbidden weapons, and menacing and challenging him to a duell, contrary to the Acts of Parliament. Alledged, 1^o No assassination designed, because it was only an accidental rencounter on the hy-way; (*vide cap. 1, extra de Homicidio*.) 2^{do}. His convoking, and wearing armes, was no crime, because he had a warrant from the Privy Council to command the heritors there, in Argyle's invasion, and till the country was quieted. Answered, *In assassinio ob atrocitatem solus conatus punitur pœna ordinaria*. But the perhuar declared he insisted not *ad pœnam ordinariam*, but only to be punished *arbitrarie*. The ground of the quarrell was, the King

had nominat Mr. Rorie to be Bailzie of Carrick, in place of the Earle of Caffils, who refused the test; and of Crawford of Ardmillan, who had fled for malversations, and Cullayne expected it; so on this took up a pike and resentment. It was submitted to the Clerk-Register and King's Advocat; and they decerned Cullayne, at the Michaelmasse head-court of Carri&, to crave Mr. Rory, sitting in judgement, pardon, and to pay 15 lb. sterling for his witnesses expences; and on this the Criminall Lords deserted the dyet *simpliciter*. Ther was difficulty to get a quorum of the Justices, which is 3 in vacation-tyme, by the [22^d] A& of Parliament in 1681: which A& seimes to insinuat, that they are only bound to attend in vacance the moneth of Jully.

3 *Septembris* 1685.—At Privy Counsell, ane new A& is made for No. 590, securing the peace of the Hylands, and which bears this clause, p. 192.
That ther thifts and wrongs shall not be comprehended under the late A& of indemnity, but that they shall restore private dammages and losses.

Eodem tempore.—A warrand comes doune from Secretary Melfort, No. 591, to adjoyn and install Drummond of Blair, the Chancelor's purse-bearer, p. 192.
conjunct in the office of keiping the Signet with Hew Paterfon of Bannockburne, and to the halfe of the profits; and so each Secretarie hes one, Murray having put in Bannockburne. My Lord Edmiston, having tane Blair's oath of the test, &c., the Commissioners for the Wryters installed and receaved him; and he deputed under him Patrick Johnston to be conjunct with Robert Paterfon.

5 *Septembris* 1685.—Some filth having been throwen over the windows No. 592, of Patrick Grame, Captain of the Toune's Company, on some gentlemen's p. 192.
cloaths, and complaint being made to the Conftables, and they offering to poind, some of his guard came and deforced; wheiron the Conftables taking this as an affront, they convocated, and offered to invade the court of guard. The Chancelor caused cite the Toune for this as a ryot, *quia tenentur pro diligentia*, and are liable *de culpa et dolo fractæ pacis*;

and on this pretence, *supra pag. præced.*, we have told, he got a protection to the Provost, that he might appear and defend the Toune; so the ryot was only used as a sham to bringe the Provost to the street again.

No. 593,
p. 192.

Eodem die.—Parted Mr. George Scot of Pitlochie and a great many other peeples, some of them criminall prisoners given him by the Privy Counsell; others, who were distressed by poverty, debt, and captions, or were whoores or prodigal wasters. A 3^d sort were of phanaticall principles, and dissatisfied with the Governement. They sailed from Leith to the new plantation in America, of East New Jersey. See Pitlochie's description of it, and Modell of Governement, in his book. Ther fell a tumult and mutiny betuen him and John Johnston drogist, another undertaker, who should have the disposeall and use of the ship cabin. By crosse winds, they were put in to the West of England; but after 4 moneths sailing, arrived ther, and Pitlochie and above 60 more dyed by the way.

No. 593,
p. 193.

11 *Septembris* 1685.—The Toune Counsell of Edinburgh, by ther A&T, discharges a corrupt custome, wheirby the Toune, in all ther works, used to employ (for the votes) the present Deacon of the trade, as the mason, wright, smith, &c.; who ordinarily exacted double price; they ordain any others who wrought best or cheapest to be employed.

11 *Septembris.*—The Manufactory A&T, see it *supra* at the 14 of August.

12 *Septembris.*—The Chancelor parts for London, and after him the Marquis of Atholl. The discord among our great men, and pretences theirow, see *alibi*, in my Historick Manuscript.

No. 594,
p. 193.

13 *Septembris* 1685.—Ther is a ryot pershued by . . . indwelle rat the Sheins (*Monasterium Senæ*), neir Edinburgh, against . . . before the Secret Counsell, for breaking up his house in ther return from a lykewake, and beating him to the effusion of his blood, &c. It's admitted to the pershuar's probation.

16 *Septembris* 1685.—By ane A& of Privy Counsell, on a letter from No. 595, the King, his present Majestie's birth-day, viz. the 14 of O&tober, is or-^{p. 193.} dained to be observed as ane anniverfary festivall, by sermons of thanksgiving, and other demonstrations of joy. Ther was a doubt made, if it was the 13 or 14 of O&tober; for Spondanus, in his continuation of Cardinall Baronius' Annalls, and Baker, and some others, make it the 13 day; but King Charles the I.'s oun Manuscripts call it the 14.

18 *Septembris*.—The Bischop of Edinburgh suspends Mr. Geo. Trotter, No. 596, minister of Edinburgh, for reviling and contumelious language he gave^{p. 193.} to Geo. Drummond Toune-Treasurer, alledging that the Magistrats drank ther Ministers stipends.

21 *Septembris* 1685.—Two letters came from his Majesty; one adjourning our Parliament from O&tober (which was its dyet) to the first of April nixt, (being Thursday,) 1686; the 2^d, to stop any election of Magistrats in the city of Edinburgh till the King declare his farder pleasure; and this being intimate by the Privy Counsell to the Toune Counsell, it was explained so as the new choicen Deacons behooved to retire from the Counsell, and the old ones come back and officiat till the King's farder will should come. This letter disappointed Baird and Thomas Hamilton's faction; the one having intended to be Proveft, and the 2^d Dean of Gild. It was then rumored, that the King would ather recommend Sir Andrew Ramsay, or Charles Murray to be Proveft: But Rocheid, by money at London with Melfort, with the help of Worden and Kennedy, Conservator, got a letter for Thomas Kennedy to be Proveft: *de quo infra* 4^{to} *Octobris*.

24 *Septembris*.—By a speciall warrand from the King, the airs of No. 597, the late Duke of Monmouth, with Sir James Dalrymple of Stair, (on^{p. 193.} Sir John Cochrane's delation,) and Androw Fletcher of Salton, are cited on 60 dayes to the Criminall Court for treason, at the mercat-crosse of Edinburgh, and peer and shoar of Leith.

No. 598,
p. 193.

Primo Octobris.—The Bailzie of the regality of Hamilton pershues John Steill, litster ther, for a ryot, that wher ther being an order to imprison him for defamation he had spred on Mr. Thomas Hamilton, Dean of Hamilton, as guilty of things tending to sodomy, (*de quo infra* 6^{to} *Octobris*,) the rabble of the toune of Hamilton rose and rescued him. It's admitted to probation.

No. 599,
p. 193.

4 *Octobris.*—Ther arrived tuo letters from the King to his Privy Counsell heir; the first, anent the 2 Cefnocks, ordaining them (tho' liberat *supra* 6^{to} *Augusti*) to be re-imprisoned in the Basse, notwithstanding the remission given them, which was only for ther life; because Sir John Cochran hes deponed ther deep guiltinesse, tho' they with great confidence alwayes denyed it. *Quæritur*, How far the remission should protect them from perpetuall imprisonment, this being no new cryme?—(They were liberate upon another letter from his Majesty in January 1686.)

The 2^d letter nominated Bailzie Kennedy to be Provest of Edinburgh, (see 21 *Septembris*, *supra*,) and, accordingly, he was admitted on the 6^t of October, being the toune of Edinburgh's election day, (for Michaelmas this year fell on a Tuesday,) and so they could not elect till the Tuesday thereafter, as ther fatall mistake on this point, in 1674, taught them.—When they offered to administrate to him the bienniall A&t, he said he was named by the King, and so not bound to take it. So he thinks of perpetuating.

The Privy Counsell adjoyned the Earle of Lithgow and [the] King's Advocat as assessors, to see ther election orderly done, and that they all take the test, &c. It was objected by Bailzie Brand against the choising of Magnus Prince to be Dean of Gild of Edinburgh, that he was tackfman to the toune in ther Society, a part of ther common good, and so could not be a Magistrat. See the reasons and Acts for this *alibi*. By this we see the King intends to assume the nomination of the Provest of Edinburgh in his oun hands for the future; as also of the other considerable townes in Scotland, and particularly of Edinburgh [Aberdeen], whar this year he named one Lesly to be Provest.

6 Octobris 1685.—At Criminall Court, ther is a præcognition raifed No. 600,
of that perfhuit intended by his Majeftie's Advocat and John Steill his ^{p. 194.}
informer, (*vide paginam præcedentem*,) againft Mr. Thomas Hamilton,
Woodhall's fone, minifter of Hamilton, and Dean of Glaſgow, for the
cryme of fodomy, at leiſt of attempts tending therto, (which is *crimen in*
fuo genere.) The dyet of the Criminall Court was not till
November; but the minifter, to get a favourable report and impreſſion of
the affair, he procures this præcognition and inquifition for examining
what the witneſſes could ſay. The Juſtice-General, Juſtice-Clerk, and
King's Advocat, at the interceſſion of the 2 Arch-Biſchops, reſolving to
bring of the minifter, they diſcouradge the witneſſes, ſo that they goe
back of what they had formerly ſaid; then by ane interlocutor, they
repell Fleming, Pollock, and Auldſton from witneſſing, 1^o Becauſe *pro-*
diderant teſtimonium; 2^{do} Becauſe they had entred in a combination to
accuſe the minifter, and had contributed money to carry on the proces,
for *calumniare audacter aliquid ſemper adhærebit*; yet in fodomy *et aliis*
criminibus occultis teſtes inhabiles et ſingulares admittuntur.
3^{tio} Witneſſes not receaveable at the parties' inſtance may yet be adduced
by the King's Advocat, for the King's intereſt, *ad vindictam publicam*.
Then finding that Muirhead of Stevinſon and ſome other of the witneſſes
declared that the minifter uſed baſe poſtures to them, in taking them by
the privities, &c. To choak this, (for *dat veniam corvis, vexat cenſura*
columbas,) they paſt ane interlocutor, that they knew it was the Privy
Counſell (who recommended this præcognition); ther meaning that they
ſhould take cognition and tryall of nothing but what was direct fodomy,
or acts tending to the committing theirow, and ſo refuſed to interrogate
the witneſſes on theſe other immodeſt poſtures, alledging they ware but
caſuall and accidentall, and at moſt they ware but uncivil and unman-
nerly behaviours, belonging only to the Biſchop and preſbytrie's cogniz-
ance, which ware too ſoft words for this cryme in a churchman. How-
ever, they would not imitate Ham, who diſcloſed his father's nakedneſſe,
but rather the great Emperor Conſtantine, who ſaid, If he ſaw a biſchop
in adultery, he would throw his goune over him. Yet now the ſcandall
having taken vent, it was the reputation of the Church to purge ſuch a

profane man from them ; and it gave the Papists more advantage of us that we defended such a man, than if we exposed him to punishment. Then, in regard Steill alledged ther ware fundry of his materiall witnesses keipt out of the way by the minister's influence, they granted him a diligence on 8^t dayes longer to bring them in, (tho' they resolved to stifle and suppress whatever they could say,) and sent Steill to prison, in regard his diffamation and calumny was already apparent, unlesse he found new caution to insist. Then at the 2^a dyet, they having examined mo witnesses, but conform to ther interlocutor on a^cts tending to sodomy, and they denying that, the Lords of Justiciary formed a report that they found him innocent ; and Steill, to free himselfe of imprisonment, confest he was hounded out by the tounes peeple in Hamilton, and so was liberat. In this case it was argued, 1^o If the persons to whom he offered thosse immodesties could be admitted as *habile* witnesses against him, being *socij*. 2^{do}. Each of them only deponing on single a^cts done to themselves, and so ware only *testes singulares*, if this was only *singularitas diversificativa* or *adminiculativa*, and so might be conjoyned together to make up a full probation. See *Mascardus, conclusio*, 1199, *num.* 25 ; *Stair's Decisions*, 25 *Februarij* 1667 ; *Ladie Milneton*, *pag.* 538, &c.

No. 601, 7 *Octobris* 1685.—Ther is a proclamation over the Croffe of Edinburgh, denouncing all thosse of the King's fewars, &c., who had not payed ther feu dueties, and made ther *Æquees* at Exchequer, they having got 3 moneths, conforme to the late A^ct of Parliament in 1685.

No. 602, 12 *Octobris*.—Sir Duncan Campbell of Auchinbreck, Mr. Alexander Campbell advocat, and many other of that firname, are cited on 60 dayes for treason in joyning with Argile.—(And being called at Criminall Court on the 14^t December to be forfeited on probation, were continued to the 5^t of January 1686.)

No. 603, 15 *Octobris*.—At Privy Counsell, Sir Andrew Ramsay of Abotshall gives in a petition, shewing that one Charles Whyte had bought 200 lb. sterling worth of bear from him, and then fled to London, wher he

was pershueing him, and now being heir, he craved ane order to arreist him, till he should find sufficient caution to answer and pay what should be decerned against him: this is *cautio judicio fisti et judicatum solvi*. The Lords, seing by Crawford the Counsellor's letters that ther was a proces against him ther, they granted warrand, and accordingly he was imprisoned. See more of this *infra*, page 209.

Eodem 15 Octobris.—George Murray Lieutenant of the King's guard, No. 604,
and others, did, on the 21 of September last, obtaine a clandestine order p. 195.
of Privy Counsell to apprehend the person of Jonet Pringle daughter to the late Clifton, and upon information, shee having retired out of the way, he got ane order against Andrew Pringle, hir unckle, to produce hir; and he, by a bill, representing it was *factum imprestabile* for him, shee being out of his custody and *sui juris*, and arrived at the age of 20: They urged that he was contumacious, and had put hir out of the way; but he purged himselfe upon oath. Then they pressed shee should be exhibited still, for he being *alioqui successurus*, it was not just shee should be in his custody and possession, and he had given prooffs of his negligence towards hir brother, who was lately dead, and they had interest to see shee ware not keiped in restraint and captivity, they being hir mother's freinds, who was Murray of Leviston's sifter. But shee having married Andrew Pringle, hir unckle's sone, (to disappoint all their designes of felling hir,) a boy of 13 years old; *Queritur*, He being yet a pupill, and within 14, how far this marriage subsists, *nisi malitia suppleat ætatem*? The Privy Counsell first enacted the said Andrew to produce hir before them, that they might try if shee was in absolute freedome, or under restraint, (as was alledged,) betwixt and the 5^t of November; and then, on 2^d thoughts, they abridged and anticipate the day that he should produce hir before the 30 of October, under the paine of 10,000 mks; which was arbitrary and illegal, the 5^t of November being granted in his favors.

20 *Octobris* 1685.—The Synod of Edinburgh met, wher Mr. Munro, No. 605,
the first Minister of Stirling, preached. Ther was a report made from p. 196.
the Presbytrie of Hadington, that Sir John Seton of Garmilton had some

fervants who had been debauched to apostatize, and make defection from the Protestant religion to Popery; and that not only by the Canons of our Church, but by our Acts of Parliament (as A& 47, Parl. 3^d, James 6^t, in 1572) apostats, after admonition by ther pastor, are to be excommunicated. The Bisshop signed a warrand to proceed in ther proces of excommunication; tho' it's like it will sleep. This layes also a platform against Doctor Sibbald, and Hew Broun, who had also revolted. But to qualify this zeall, the Bisshop, in his speach, ordered them in ther sermons to forbear all personall reflections, but only to handle the Popish controversies in generall; and if they pleased to turn ther afternoones sermon to a catechetick discourse, as was the custome of the Protestant church of France, now sadly persecuted; that our fears neided not be so panicall for Popery, because, 1^o. We had the promises and providence of God to rely on. 2^{do}. The King's promise and assureance to protect our religion, (tho' some cannot find wher the King hes promised it.) 3^{tho}. We have strong laws in favors of our Reformed religion.

No. 606,
p. 196.

24 *Octobris* 1685.—A Privy Counsell is called to read a letter from the King, procured by the Chancellor, and his brother Melfort, reprooving them sharply for a letter they had sent up to him with the Marquis of Atholl, recommending him as a person fit to serve the King in any trust, (which was tacitly to insinuat the offering him to be Chancellor,) and intreating the King not to believe misinformations of his Officers of State; and he requires them to tell whom they meant by misinformers, and who ware the officers accused. All this was aimed at the Clerk-Register, who had contrived that letter to secure himselfe against the informations of the Chancellor, and Sir John Cochrane, hounded out by him. And the King also rebukes them for examining Mr. John Weitch [Veitch,] when his Chancellor had left him close prisoner, and had discharged any to have acceffe to him without the King's speciall warrand. The Chancellor's designe was to cause Veitch load the Hy-Treasurer, as if he had connived at Mr. William his brother, a traitor's slipping out of the way. Atholl and the Register brings him out after the Chancellor is gone, and causes him declare he knows nothing of it.

The Privy Counsell was much straitned what answer to returne to the King: but they sent a most humble letter, submitting to his Majestie's judgement. Some blamed Melfort for causing such a he&toring letter be sent the Privy Counsell of Scotland. Veitch falling sick, and supplicating for a physitian, they would allow none to goe in to him but the apostat Doctor Sibbald; which was looked at by some as strange.

28 *Octobris*.—Ther comes a letter, signed by Secretary Murray, to lb. § 2. the Bischop of Edinburgh, signifieng that the King was informed that ther was seditious speaches uttered in the pulpits of Edinburgh, tending to stir up the peeple to a dislike of the King, or the Popish religion, and ordaining him to advert theierto on his perrill. He convened his Ministers, and intimat this to them, that it had arisen on the public reflecting on Doctor Sibbald, and the Ladyes of Erroll and Meldrum had threatned him, &c.

Eodem die, [28 *Octobris*.]—By commiffion from the Lords of Ses-^{No. 607,}
sion, my Lord Cardrosse's estate is roused, and the Earle of Mar^{p. 196.}
buyes it at 17 years purchasse; but the Lady Cardrosse complained that the rentall was too low, it bearing no consideration for house, yeards, planting, and parks, which in all sales use to be valued; and without thesse the land would give lesse. See *infra*, more of this, pag. 215.

29 *Octobris*.—At Privy Counsell, Robert Hamilton, of Presmennan,^{No. 608,}
persuades Archibald Master of Kingston, for a ryot, in deforcing the^{p. 197.}
messenger who came to poind his cornes at Whittinghame barne-yard, and raising the common peeple ther, and beating the witnesses. The Lords admitted the libell to probation, but allowed the M^r ten dayes if he had any thing to say, in regard by a bill he craved a delay. Their-
after they grant warrand to messengers to apprehend and incarcerate him.

Eodem tempore.—By ane order from the King, it is appointed that^{No. 609,}
no remission shall passe till it be first revised, approven, and recomended^{p. 197.}
to him by his Advocat, which will cause him be more advertant.

No. 610,
p. 197. 28 *Octobris* 1685.—The Toune of Edinburgh make a very strict A& against the beggars who frequent and besedge the streets, ordaining them to be put in ther correction house; and that no landlord set any houses to unknowen peeples, but upon a ticket from the Magistrats, who are to cause thesse unfree persons find caution to them, not to receive any vagabonds, nor to keep bordell houses, and not be burdensome to the Toune, &c.

WINTER SESSION, NOVEMBER 1685.

No. 611.
p. 198. 3 *Novembris* 1685.—This being the first Session-day, (being a Tuesday,) the Lords met.

4 *Novembris*.—The Lords names the advocats for the poor.

No. 612,
p. 198. *Eodem die*.—The Toune Counsell of Edinburgh, by ther A&, lay aside Sir Patrick Home and Mr. Charles Gray, Advocats, from being ther assessors, (because brought in by Provost Drummond and Bailzie Baird,) and elected and installed, in ther places, Sir John Gordon, at the Duke of Gordon's recommendation, and Mr. Robert Stuart senior, who was Provost Kennedie's cousin, and Advocat. They were pleased to continue me in the office. This lays a foundation to make the assessors place ambulatory with every Provost, that their creatures shall goe out and come in with them.

No. 613,
p. 198. 5 *Novembris* 1685.—The Gunpowder Plot is kept only by the Lords, because ther was no session this day. But as the former years are forgot by the Churchmen in having no sermon, and by the Castle in discharging no guns, so, to shew our graduall advances to Popery, it's this year, *pro primo*, forgot also by the Magistrats; ther is nather bells nor bonfires, as was observed *supra*, 5 *Novembris* 1683 and 1684; but it's kept with great splendor and solemnity at London; for which see exceptions tane in my folio Historick Manuscript in November 1685.

No. 614,
p. 198. 6 *Novembris*.—At Privy Counsell, A.P. [Andrew Pringle] now of Clifton's affair, is tabled. (See it *supra*, 15 *Octobris*, pag. 195.) Clifton wearieing

of prifon, tranfact with Lieutenant Murray, and gives him fecurity for 7000 mks, to paffe from all his pretentions, and to get him and his fon and daughter-in-law affoilzied. Accordingly, they are called this day, and Clifton is abfolved from all contumacy, and contempt of any of the Privy Counfell's orders, and his bonds given him up; and to fecure him againft a pofterior fyne, his fone and his bryde are only fined in 500 mks, conforme to the 34 A&t of Parliament 1661, as an unlanded gentleman only, and not as yet ane heritor; and fand the *jus mariti* fell not by the [9th] A&t of Parliament in 1672; becaufe, tho' it was a clandestine marriage, without proclamation, or the Bifhop's warrand, yet it was not by a Non-conformift minifter, (which is the cafe of that A&t,) but by a Conformift minifter in England; and Lieutenant Murray got them a difcharge of their fyne.

9 Novembris 1685.—Being Moonday, at the Criminall Court, Margaret No. 616, Falconer relict of Alexander Sympfon maltman in Aberdeen, and their P. 199. children, perfhue John Urquhart and John Webfter merchands their, for beating and bruifing him, fo that he dyed within 3 or 4 dayes after of theffe wounds, and fo ought to be punifhed capitally, at leift *pœna arbitraria* of banifhment, &c. Alledged, 1^o This alternative was a novelty unheard of in Criminalls; and that they could not infift on both theffe contradictory conclufions, but behooved to elect or reftri&t, and that no instance could be given of fuch libelling. Answered, That the plaineft things ware the worft to demonftrate or proove, fuch as that 2 and 3 made 5; the reafon and generall acquiefcence of mankind never having drawn them in queftion; even fo heir, it was very relevant to libell, *ut reus teneatur de occifo vel faltem de vulnerato*; and without this, crimes might goe totally unpunifhed; *et reipublicæ intereft ne crimina manean impunita*. The Juftices fand the perfhwar might libell or infift ather of the wayes.

Then farder alleged, They had ane exculpation on thir grounds: 1^o That ther was no forthought fellony, but a cafuall chaudmella only, and ther was a preceding freindfhip, having been that fame day at the golf. 2^{do} That what they did was in ther ounne defence, the defunct

being the first aggressor. 3^{tho}. That the stroaks or hurts (denying they gave them) ware nowayes mortall, but he was antecedently of a tender constitution, and used a bad dyet and regiment. Answered, 1^o. Offers to prove enmity and *minas præcedentes*. 2^{do}. Ther was no just selfe defence heir, because the *moderamen inculpatæ tutelæ* was exceeded in *causa, modo, et tempore*. . . . Likeas, the defunct inculpated the two pannells as guilty of his death to Mr. Sibbald, minister at Aberdeen, *et nemo moriens præsumitur immemor æternæ salutis*. . . .

The Lords of Justiciary fand the libell relevant, as also the alledgeance of selfe-defence, and admitted both to probation, and referred that to the affise. The witnesses having only deponed this much, that ther was some mistakes and hot words betuen them, and that he came home bruised, and laid the blame of it on thir pannells; and dyed within 4 dayes after, his body being livid and blue with the stroaks; but none deponed that they saw the pannells give the stroaks: And tho' the King's Advocat, in his speach to the affise, urged that this was sufficient probation *ob rei factique evidentiam*, feing ther was no other present who could have done it, except one Chalmers a witnesse, who prævaricated extreemly by concealling what he had seen; yet the inquest (tho' tane *ex vicineto*, and who knew the *fama clamosa*, and the pannells ther attempt to escape,) fand them only guilty of presumptions of the slaughter, and referred them to the Justices to be condignely punished for the same. The Criminall Lords demurring long what to doe, at last they fyned each of them in 500 lb. Scots to the widow and bairnes, as ane assythment; and ordained them to ly in prison till they payd it. For, on ther first apprehending and imprisonment, the Justices, on the King's Advocat's letter, had liberate them upon caution, which wes not usuall in homicide, and gave them freedome to goe home and practife, and suborne both the assisers and witnesses; and caused Mr. Mathew Mackell the chirurgian, and Mr. Sibbald the minister, stay away from witnesing. La Flesche, the French chirurgian, being gone to France, sent a testificat upon oath anent his wounds. They applyed to the Privy Counsell by a bill, to get a mitigation or discharge of ther fyne; for at the hyest it was but *homicidium in rixa subitanea*, and no wayes *deliberatum*.

Decimo Novembris 1685, being Tuesday.—Andrew Atchefon wryter to the Signet, pershues William Layng, on this ground, that Andrew had subferyved many letters and fufpenfions for him, and fo he ought to pay him 18 pence for each fheit of them, conforme to the [16th] A&t of Parliament anent the regulations, in 1672, cap. [33.] Alledged, That the clients and the employment was William Layng's oune, and that he only borrowed Mr. Atchefon's name, becaufe he was a free admitted wryter, and that it was ordinar betuen mafters and ther prentifes to take only 10 pence the fheit, they being at no trouble but only ther fubfcriptions. The Lords, in regard it was attested by fome wryters to be ther ordinary pra&tife fo to divide it, and that it was William Layng's oune employment, and was wryten by and dyted by him to his oune man, therfor they decerned him to pay ten pence for every one he had confest, and gave him retention of the other 8 pence to himfelfe. But A. Aitchefon, on a bill complaining that this was againft the a&ts of the Wryters calling, to let other men's fervants wryte ther fummons or letters: The Lords ordained the boy to be examined, who declared he was truly William Laing's man, and alimented by him; but his mafter lent him to Andrew Atchefon by pa&tion, to folve that A&t of the Wryters. Yet the Lords adhæred: And the Wryters ware refolving to fyne A. Atchefon for breaking the a&t, and colloring unfreemen. But he threatned to acquaint the Secretaries, his mafters, to whom at ther entry they payed of dues near 1000 m&ks; and yet the Lords brought in ther fervants *pari paffu* with them, without putting them to prove ther was a pa&tion for communicating the gain. But the Lords thought it materially juft, that he who was at a part of the pains fhould alfo have a fhare in the gain.

William Layng after this entred on his tryalls to be admitted a Wryter to the Signet; and after he had payed his money and all, he dyed.

10 *Novembris* 1685.—The Duke of Queanberry Hy-Treasurer's exoneration paffes the fealls, tho' long ftopped by the Chancellor, and Secretary Melfort. It is in effect ane ample remiffion, fuch as Lauderdale and all other Commiffioners ufe to take. It feems they dare not

rely on the A& of Indemnity, [which] they took to themselves by the [31] A& in 1685, tho' his oun Parliament.

No. 621,
p. 201.

11 *Novembris* 1685.—A motion is made by some Advocats against the Clerks of Sessio, for entring into a bond of combination among themselves, that they shall passe nothing gratis, tho' it ware ane Advocat's oun cause and affair; and because it was carried on by Mr. Rory M'Kenzie, Clerk, it was proposed ther clients should not use that chamber.

No. 622,
p. 201.

12 *Novembris* 1685.—News came from the West, that Lieutenant-Collonell Buchan had met with some of thesse sculking Rebels beside Kilmarnock, and had killed 3, and tane one of ther leaders, called Nisbet, on whosse head a price had been put, and therefore they kepted him alive.

No. 623,
p. 201.

Eodem 12 *Novembris*.—At Privy Counsell, the King's letter is red, dispensing with the Test to some Papists, who had been named in the new A& of Parliament in 1685, anent the supply and excise, to be Commiffioners in ther respective Shires, for uplifting and ingathering of that subsidy. The letter boor, That the said A&, by a mistake, had injoynd the said Commiffioners to take the oaths of Supremacy and the Test; wheras by the A& of the Test ittselfe, and the additionall A& in 1681, they ware *de industria* omitted and left out, feing the King's service most not be stopped by that; therfor he names about 30 [26] Papists who ware Commiffioners of that supply, viz. The Duke of Gordon, Earle of Seaforth, Earle of Traquaire, Lord Oliphant, Richard Cockburne of Clarkington, Alexander Irving of Drum, John Gordon of Rothemay, Patrick Leslie of Boquhayne, Sir George Gordon of Geight, William Meinzie of Pitfoddells, Fetterneir, Kinnairies, &c., (see the list of all ther names beside me); and exeims and relaxes them from the Test, dispensing therewith, and empowering them to a& without taking it; which feimed a downright derogation to the A& of Parliament in 1685, and not in the King's power; for Sir George Lockhart said, whatever that dispensation might operat to secure them for all preceidings, yet if they acted after it, they incured and contracted a new guilt. It had also another clause,

but prejudice to his Majesty to dispense with any others he pleased ; but ordained the faids oaths to be imposed on all others ; which is conforme to the [13] A& in 1685, ordaining all Protestant heritors to take the Test. The true case was, the Duke of Queensberry, when Commissioner, had it in his instructions particularly, to suffer nothing to passe to the prejudice of the Roman Catholicks more then was already ; yet my Lord Kintore, Treasurer-depute, and the Clerk-Register, slipt that clause into the A& of the supply, which, being challenged by the King, the Chancellor and Treasurer purged themselves of it upon oath, so it landed at Tarbet's door, which made the Duke of Gordon do him all the bad offices he could for some tyme. This letter alarumed some peeples, as an say-shot (essay) that the King intended, by litle and litle, to put Papists in the Governement, and which they thought feimed clear from his speech to the English Parliament on the 9^t of November 1685, when they fate doune.

Eodem die.—At Privy Counsell, Lady Mary Douglas, sister to the No. 624,
Earle of Morton, pershues Sir James M'Donald of Slait her husband p. 201.
for ane aliment, shee having refused to cohabit with him, because he brought in his concubines, and set them above hir at his oun table. The Lords modified to hir ane aliment.

2^{do}. The Earle of Lithgow, and his sone Mr. Alexander, (now designing himselfe Earle of Calander,) having charged James Hamilton wryter, to give up the papers delivered to him by the late Earle of Calander, for the use of Lord John Hamilton, 3^d son to the Duke of Hamilton, (see it *supra*, 18 August, pag. 191 :) They who ware violent for this when the Duke's back was turned, doe all now come and make him apologies ; and the letters are suspended, and James Hamilton affoilzied.

3^{tio}. We had ane account that Sir William Bruce was to be made Generall and oversier of the Mint, tho' my Lord Maitland had a promise of it ; for tho' they libelled malversations against his Father, yet they had none to charge him with, and he was conjunct in the gift with his Father. But some statismen forget ther promises. They say Sir John Falconer was also to be reponed to be Master of the Mint, if he would offer to be Catholick ; but he was thought *merito* disappointed, having betrayed

Lauderdale, tho' he wanted not provocations. (See this of the Mint altered, *infra* 16 Decembris 1685.)

4^{to}. We heard that the Earle of Kintore, by Queansberry's help, and Strathmore, by his brother-in-law Middleton's, [had] obtained a gift from the King of all the fynes imposed, *supra*, on the gentry of Murrayshire, the Brodies, &c., for their Ladies conventicles, and their other irregularities; only the Laird of Grant obtained from the King a discharge of his fyne. Some thought Kintore might fear an action of concussion, as weell as the Earle of Aberdeen had felt from Lauderdale in the Mint decret; for Kintore was he who sate as Judge in fyning thesse heritors in Murray, and yet now takes a right to thesse fynes himselfe had imposed.

No. 626,
p. 203. 13 Novembris 1685.—My Lord Aberdour, Morton's sone, against Sir William Bruce of Kinross, is debate. It's a reduction of a discharge of the price of Lochlevin given by the last Earle of Morton to Sir William, as done after he was at the horne; and Aberdour, as donator to his escheat, quarrells it. Alledged, 1^o Aberdour hes gevin a ratification of this discharge. But this is for any kindnes he might clame or pretend only; and he was not then donator. 2^{do}. Alleged, The discharge is sufficient, being prior to the gift and declarator, as was found in Weitch, Pallat and Pollock-Maxwell's Cafe, Novembris, 1673. Answered, Payment prior to the gift is sufficient, but not a discharge; if Sir William offer to prove payed, they will sustain it as relevant.

No. 634,
p. 204. 19 Novembris 1685, *post meridiem*. — At Privy Counsell, Baillie John Johnston of Polton, and Mr. Edward Wright advocat, pershue Bruces of Newton and Kinnaird, for a ryot in taking away the teynds of thesse lands, tho' they stood infest in them, and had a decret of removing. Answered, Ane inhibition is the only habile way to infer a spulzie of teynds, and not a decret of removing. Replyed, This is not a teynd betuen ane heritor and a churchman (wher inhibition is used,) but a third and teind betuen master and tennent. The Lords, on Prefident Falconer's moyen, his ladie's mother being married to Kinnaird, demurred.

2^{do}. The Landward fleshers complain, the Toune ones had seized on some beiff carcasses they ware felling on dayes allowed for all to come within the brugh. Answered, They did not keip the slaughte-houses appointed for cleanlines by the Toune. The Lords ordained them to be restored, and inclined to favour all who brought in vivers, and would not have the Tounes-men to monopolife it.

21 *Novembris* 1685.—At night a fyre broke out in the upper Baxter's No. 636, Clofe in Edinburgh. p. 205.

24 *Novembris* 1685.—At night, the Canongate Tolbuith was broke, No. 638, and 5 of the Privy Counsell's prifoners, who ware in for conventicles, p. 206. &c., escaped.

28 *Novembris* 1685.—The Lords advifed the Toune of Glasgows bill No. 646, againft the Arch-Bifchop of St. Andrews, with ther anfwers anent the p. 209. 20,000 mks bond given by them for the tack of teyndes he fet them. Ther objections (wheirin the Arch-Bifchop of Glasgows joyned with them, to fee if he could make the cafuality to fall to be in his tyme,) ware :—That the Bifchops ware but adminiftrators, and may not dilapidat; and he was in *fuga* to St. Andrews. 2^{do}. That it was fet *tempore indebito*, feing the former tack was not fully exfpired, but had a moneth to run; (anent which fee Craig, *Feudorum* pag. 205 et 206; Dury, 26 July 1631, Bifchop of the Ifles againft Shaw, wher fuch a tack was found null; Hadington, in Januar 1612, Home & Home, folio 71; et *penult. Junij* 1613, Collonell Balfour againft the Parifhoners of Gardroffe, folio 107.)

Sir David Thoirs and Sir Patrick Home, in ther anfwers, having reflected on the Toune of Glasgows bill, which was drawen by the Kings Advocat, calling it a congeftion of fuch wild notions as never entred into the head of any lawyer; the Kings Advocat prevailed to get them called in, and reprooved with this admonition, That they moft carry refpectfully to the Kings Advocat as a Minifter of State, and that they would punifh any who did not keip themfelves in their informations, bills, anfwers, or pleadings, within the bounds and terms

of law, but immodestly reflected ather on what was said or on the fayer. And as to the affair, the Lords refused the Toune of Glasgows bill, reclaiming at the exorbitancy of the *greffum* of 20,000 mks, for a tack of teynds not worth 500 mks by year; tane by the last Proveft Barns for his oun ends, when he was put in by the Arch-Bischop to be Proveft, and when he was bankrupt.

No. 648,
p. 210.

Eodem tempore.—Patrick Syme clark of the Cannogate dying, a competition arose betuen the Toune Counsell of Edinburgh, pretending they had the right to input another clark, and that ther clerks had resigned this, and Mr. John Richardfon and John Drummond, the Toune-clarks, alledging it was a perquisit of ther office, and that they had been in the use and possession of placing clarks and deputs ther. See *infra* more, pag. 216.

P. 211.

29 *Novembris*.—Being St. Andrew's day, the Colledge of Phyfitians choise Sir A. Balfour for ther Prefident, Cranston and Halket ther censors, and Pitcairn proctor-fiscall, and so Dr. Sibbald goes of.

30 *Novembris* 1685.—Two fouldiers in Mar's regiment are shot to death for deserting and running away from ther cullors, and a third is reprieved, which the Generall hes power to do.

No. 649,
p. 211.

Primo Decembris 1685.—Ther is a letter from his Majesty to the Lords of Seffion, in favors of Madame Martha Temple, reliet of Edward Ruthven, bearing, that shee had a joynture provided to hir out of the lands of Corstorphin; and feing shee is a stranger, the Lords may summarly hear and discusse hir cause. Hir party opposite was Torwoodhead, my Lord Saline's son-in-law.

2^{do}. A letter to the Bischop of Edinburgh from the Secretaries, intimating his Majestie's pleasure to discharge him to proceed in the excommunication of Garleton's gardner, (*de quo supra*, 20 *Octobris*, in the fynod ther was a warrand to proceffe him.) This is to signify, you must not touch nor discouradge the meanest of that persuation.

2 Decembris 1685.—The Lords, on a bill, and his taking the test, No. 650, re-admit Comifar Monro again to be ane Advocat, being now pardoned p. 211. for hy-treason, and being in the conspiracy. This gave a generall discontent to the Advocats; for tho' the remission redintegrats, yet *nota inuritur nec tollitur infamia, sed pænæ tantum gratiam facit*, l. 3, *C. de generali abolitione*. And the Lords should be more tender of the Faculty's reputation, by which most of themselves have risen, unles they ware commanded to doe it by superior powers.

4 Decembris 1685.—One Nisbet, taken, *supra pag.* [201], for disowning No. 654, the King's authority, and having been at Pentland hills, or Rouland- p. 212. green, Bothuel-bridge, &c.; and one called Stranger, of the same principles, are hanged at the Grafs-markat. A third was reprieved, having acknowledged the King.

7 Decembris 1685, being Moonday.—At Haddington, in a meeting of No. 656, the Commissioners, by vertue of the Privy Counsell's order, I (with p. 214. fundry other gentlemen) was sworne a Commissioner of the Supply, and a Justice of Peace of the shire of Eist-Lothian.

9 Decembris 1685.—Mar and Lady Cardrosse reported by Salin; we No. 660, see *supra*, 28 Octobris, page 196, the estate of Cardrosse roused; now p. 215. the Lords, on the Ladie's bill, refuse to allow any thing for the house and yeards, and ordane hir to produce hir factory and commission from hir husband, now in Carolina.

Eodem die.—The Toune Counsell of Edinburgh elected Doctor No. 661, Monro, Professor of Divinity at St. Andrews, to be ther Principall of the p. 216. Colledge of Edinburgh, in place of Mr. Andrew Cant, lately deceifed.

10 Decembris 1685.—This day Tarbet was chosen Vice-President, because President Newton was absent, this being the first day of his fatall indisposition.

No. 662, *Eodem* 10 *Decembris*, *post meridiem*.—At Privy Counsell, George Dallas of St. Martin's, and his sone, pershues Mr. Charles Home of Ayton, and Mr. Alexander Home wryter, for defamation of Mr. Dallas younger, that having been charged by him for a summe of money, they gave in a suspension on this reason, that he was *rei suæ non satis providus*, being interdyted by his father; which was a false aspersiõ, and reflected on a person who was the King's baron. Answered, That he having done some deeds in his minority, his father caused him make a revocation, and published it, and then put it unto the Register; which is a stile and practise only used by our Kings in their revocations; and this publication and registration gave them ground to think it was like ane interdictiõ. All that the Lords did at present was to give Mr. Home the wryter ane admonition to forbear reflections in his bills; which was small reparation to Mr. Dallas.—On the 14 of January 1686, the Lords modified 50 lb. Scots against Mr. Charles Home for George Dallas's expenses.

2^{do}. Some are banished to the plantations for refusing the oath of alledgeance.

No. 663, 12 *Decembris* 1685.—The cause of the Poor of the West-Kirk against Bailie Baird, Dean, and others, is advised, and decerned against them to repay proportionally the 500 merks that Kirk-Session advanced, out of their Poor's money, in 1650, to re-edify some seats in the Church then broke down by the Englishes; reserving their releiff against their authors in the lands.

No. 664, *Eodem die*.—Mutual bills having been given in for sequestrating the rents of the estate of Calander, during the dependance of the plea betwixt Duke Hamilton's son and the Earl of Lithgow's son; the Lords nominated John Keirie of Gogar to uplift the same *medio tempore*.

No. 665, *Eodem die*.—*Supra pag.* 210, *Nov.* 28, we see a quæstion betuen the Magistrats of Edinburgh and the clerks, anent the clerkship of the Cannogate. The Magistrats having called for ther 2 clerks, and commanded them to produce ther right to the office, if it extended to the Cannogate

or no, they in the mean tyme give a dimiffion and deputation to Mr. William Syme, brother to the faid Patrick, who formerly injoyed it a fhort tyme, tho' he gave a good fumme for it; and he theron raifes ane advocation of the affair from the Toun Counfell, who taking this for ane affront, they convene ther 2 clerks, and with the concurfe of the King's Advocat as ther affeffor, they fufpend them from ther place on thir grounds of malverfation, that they had given a deputation while the Magiftrats were taking cognition of ther right; and that they, at leift Mr. William Syme ther deput, had declined the Magiftrats juriffdiction by the advocation. What emboldned the Proveft the more to proceed thus fummarily was, he had got a recommendation from Secretary Melfort to put in Cathcart of Carbifton, Sir James Rocheid's fon-in-law, in that place, which he had formerly poffeft, and was turned out of. The Toun Counfell, during the fufpention, authorized Alexander Gray to fubfcribe and officiat; and they required them by way of instrument to deliver up the keyes of the Charter-kift. The Clerks, to get themfelves reponed, did offer humble fubmiffions; but it was required that they and Mr. William Syme fhould paffe from their clame (tho' his brother had got litle for his money,) to the Cannogate clarkfhip.—On the 18 of December they are reponed again to their place, but required to fubmit. The King's Advocat gave his opinion, that Carbifton might be fummarily reponed; but Sir G. Lockhard faid, their gift could not be quarrelled but in a reduction. However, they fummarily repoffeft Carbifton to the clarkfhip of the Cannogate, and themfelves are turned out, and Sir James Rocheid reftored, *infra*, page [234.]

14 *Decembris* 1685.—Being Moonday, at Criminall Court, Campbell No. 666, of Auchinbreck, and many others of that firname, who were cited *supra*, p. 217, 12 *Octobris*, for treafoneable joyning with Argile, are this day called to be forfaulted on probation; but are continued to the 5th January 1686.

15 *Decembris*.—Prefident Newton dyes. And Tarbet, who fate formerly as Vice-Prefident, not being prefent, Caftlehill is choifen by the Lords Prefident during the vacancy.

No. 667,
p. 217.

16 *Decembris* 1685.—Ther is a letter from his Majesty to the Lords of the Seffion, bearing that he resolved now to open his Mint, and choife the Officers of it; and that the Lord Maitland had shoven to him a gift he had theirow, anent which the King desired to be resolved of thir two questions: 1^o, If his gift expired by the last King's death? 2^{do}, If the decreet of the Mint annulled his right? Thir objections ware made by the Hy-Treasurer, and Sir William Bruce, who was seeking a gift of it from the King, (as ye will see *supra*, page 202, but was stopped by Maitland's appearance); and the King craved the Lords advise as his Counsell at law. They red the decreit and gift, and, except three, they all voted that his gift being *ad vitam*, fell not by the late King's death. 2^{do}. That in the Mint decreit, ther was no malversation proven against him. Some ware for inserting the reasons of ther opinion in ther letter to the King; but they could not aggree on them. Some objected Maitland's gift was null, not bearing a *modus vacandi*; but it was answered, It was a conjunction. See *infra*, more of it, pag. 235.

No. 670,
p. 218.

17 *Decembris*, *post meridiem*.—At Privy Counsell, the Maltmen of Glasgou pershue the Magistrats therof for oppression, in fyning each of them in 100 lb. Scots, the price for alledged stealling and abstracting of the Excise of ther malt, wherof the Toune had a gift. Answered, What was done was in prosecution of Acts of ther Toune-Counsell and the [14th] Act of Parliament in 1661, anent Excise, is very strict against abstracters. This was committed. Then on the 21 of Januar 1686, this affair was again tabled. The maltmen complained of a ryot and oppression that Provest Johnston at his oun hand had sent for them, one by one, and because they refused to pay 100 lb. Scots the peace, he summarly put them in prison, without convicting them, or using any manner of probation by oath, write, or witnesses, or holding a court and decerning them. Answered, By the custome of the Toune of Glasgou, the maltmen payes not only ther excise, but also the Toune's proportion of ther publick burdens; and the former Provests have been in use to exact this, and the maltmen, by a generall acquiescence, have submitted therto; and the Provest hes done no more than what the former Magistrats did before

him. Probation having been led by both, the Privy Counsell granted a farder commiffion to examine Bell and Campbell, 2 old Provefts, what hes been the cuftome, (tho' it feims a praftife not very juftifiable); and after a long debate, whither the libell was already found relevant, or if it was only ane A& before anfwer, they recommended to Duke Hamilton, &c., to endeavor to agree the parties. This cafe divided the 2 Arch-Bifchops, and they drew the 2 heads in our State, the Chancelor and Queanberry, alongs with them. St. Andrews, out of pique to this Magiftracy who had fufpended his bond for the tack of ther teynds, hounded out and incouradged the maltmen againft them; and the Chancelor and his party in the Counfell joyned with him. The Arch-Bifchop of Glaſgow ouned the Proveft, &c., and the Hy-Treafurer and his faction fyled with him, who this day feimed to have the better. But on the 28 of Januar, it being renewed again, the Privy Counsell advifes it; and in regard the Magiftrats had in a commoning offered 100 lb. ſterling, to be free, the Chancelor's party prevailed this day to get them fyned in 2000 mks, and to reftore what they had exacted of the maltmen; and Bailzie Johnſton the Proveft's brother is ſent to priſon: ſo the Treafurer's faction loſes it this day.

19 *Decembris* 1685.—The Dutcheſſe of Lauderdale gives in a bill No. 673, againſt Sir William Sharp of Stanihill, in regard of his fickneſſe, craving ^{p. 218.} he might be examined anent the having fundry papers belonging to the deceaſt Duke of Lauderdale, hir huſband, and conſequently to hir as deriving right from him, or relating to the lands he had diſponed to hir, or to that appriſing of Anderſon of Hills, with which this Earle of Lauderdale cloathed himſelfe againſt the Dutcheſſe, that ſhee might try if it was payed or no; and my Lord Kemnay being appointed to goe and examine him: He at the firſt meeting took up the interrogators to ſee; and having tane up his anſwers, they did not ſatiffy Mr. James Grame, who was ther for the Dutcheſſe, but he alledged he was impoſed on, and made uſe [of] as a Hew Penango; at which the Earle of Lauderdale ſtormed, and wiſhed the Dutcheſſe had never impoſed more on his brother.

2. Before adviſing his oath Sir William Sharp dyed; but the Lords,

on the Dutchesse's application, on the 29 of Januar 1686, grants a sequestration of all Sir William's cabinets and papers, that what writs relate to hir right from hir husband might be inspected.

No. 674,
p. 219.

21 *Decembris* 1685.—At Criminall Court, this day was præfixed for the tryall and forfaitor of the Duke of Monmouth, (to which his airs ware cited,) and of Sir James Dalrymple of Stairs, and Andrew Fletcher of Salton: They demurred as to Monmouth, because, tho' the probation was clear enough, yet it might afterwards be pretended to be a nullity and informality, that his airs ware cited on 60 dayes, and they ware not at liberty to appear, being ather in the Tower of London, or otherwayes under restraint.—*Vide* 4th January and 15th February 1686.

As for Stairs, they wanted one of ther witneses, viz. Sir John Coch-rane, who was not come home; and, as for Salton, they brought his two witneses to the Court, (the same 2 they had brought doune against Mon-mouth,) viz. Captain Bruce and Monsieur Buffe the Brandeburger: but they could not get ane affize; for of all the 45 ther ware but 13 present, so they ware fyned for absence, the Noblemen in 500 mks, and the Gentle-men in 100 mks, with this declaration, that thosse who should appear the 4^e of Januar, (to which the dyet was continued,) and alledge a reasonable excuse for their absence, should be liberat; and that the act amerciating such absents should not be booked till the nixt meeting, that ther might be rouse for craving to be reponed by bills. Yet the being out of the country (as some of the affisers ware) was alledged by the King's Advocat no to be a sufficient essoignee, not only if they went away after the cita-tion, but even tho' before; because I will get one (if not holden as con-fest, yet at leift) decerned for 100,000 mks on a citation at the peir and shoar of Leith on 60 dayes. But the disparity lyes heir, that in civill causes, one may leive procurators to answer in ther defence; but they cannot leive one to be ane affiser in ther rouse. Some thought Monmouth's airs (he being now forfait and dead,) neided not ane affise of Peers, because he ceased to be one: but he is not yet forfait in Scotland. Mr. Thomas Gordon, Criminall Clerk, alledged that part of his affise who ware gentlemen behooved to be barons, holding of the

King *in capite*, and ther lands erected in a barony; and on this head he refused Mr. James Eleis of Stanopmilnes. But on the 4^t of Januar *infra*, he was admitted one of the affisors, feing his lands ware kirk-lands holden of the King. They resolved then, if they could get no more of Stairs, at leift to denunce him fugitive, by which they would get his escheat during his life; but Sir John Dalrymple, his son, by his policy prevented this.

Eodem die.—Prefident Newton was buried. See it *alibi*.

22 Decembris 1685.—William Bailzie of Torwoodhead is served air No. 676, before the maiffers to James Bailzie, laft Lord Forrefter, of Corftorphen, ^{p. 220.} his father-brother; and 2 of the inqueft, viz. my Lord Lithgow (who was Chancellor) and Sir John Coupar of Gogar, deponed on the contingency, and that he was commonly holden and repute Torwoodhead's fone. This fervice will give him right to the title of Lord Forrefter, (if fo be it was not temporary in the laft Lord's perfon,) tho' he was quæftioned for it, *supra pag.* [39]. And as to Forrefter's debts; 1^o, He got litle trust many years before he dyed. 2^{do}. His daughters, the airs of line, *ordine diffussionis*, moft first relieve him, the air-maill.

24 Decembris 1685, (for the Lords fate this day, tho' immediatly præ- No. 679, ceiding Chriftnas.)—The Earle of Nithfdale againft the Dutcheffe of ^{p. 221.} Buccleuch: the Earle perfhueing for the price of the Barony of Langholme, (which was found, *supra* 25 Februar 1684, page 53, to bear annuelrent,) conforme to the minut: They alledged, they could not pay till the incumbrances ware purged. Answered, They neided not, becaufe they ware *aliunde* fecured, viz. by wodfets and exfpired comprifings, and 40 years' prefcription. Replyed, This was no fufficient ground wheron to pay a price, feing ther might be latent orders of redemption and interruptions. The Lords fand, that they condefchending upon incumbrances by ane Note under the hand of the keiper of the Register of Inhibitions, Apprifings, &c., that they ought to be purged, referving *contra producenda*.

2. Then the Lords farder confidered this caufe on the 29 of Januar, and if the fpeciall adjudication led by Nithfdale againft himfelfe, in Monmouth's name, for implement of the minut, be a fufficient fecurity. The Dutcheffe's proctours gave in a declinator againft both Chancelor and Treafurer, as being brother-in-law to the Countes of Nithfdale.

3. And on the 4th of Februar, they fand the Note of incumbrances under the Keeper of the Register's hand fufficient, and that the fpeciall adjudication wanting a proctrie from the Dutcheffe to lead it, was no valid right; tho' the minut is a tacit proctrie and mandat; and recommend to three of ther number to fetle the parties.

Eodem die.—The Earle of Perth, Chancelor, arrived at Edinburgh, having come poft from London with Claverhoufe, Balcarhoufe, &c.

CHRISTMAS VACANCE.

28 *Decembris* 1685.—His Majeftie's letter arrived, appointing Sir George Lockhart to be Prefident of his Seffion in place of Newton deceased: (See of this more in my 8^{vo} Manuscript of Seffion Occurrents, p. 94.)

29 *Decembris.*—The Hy-Treafurer arrived at Edinburgh, from London, by coatch, with the Earle of Kintore, &c.

30 *Decembris.*—The Toune Counfell of Edinburgh install Dr. Monro, elected, *supra* page 216, in place of Mr. Andrew Cant, to be Primar of ther Colledge of Edinburgh: (See the folio Hiftorick Manuscript for this, at this day, page 123.)

2^{do}. Five remiffions come doune from the King, to be pafte in Exchequer, viz. for Sir John Cochrane and his fone, for Mr. Bruce, and the German, to be witneffes againft Salton, and to Sir William Scot younger of Harden, who had given fecurity for 3500 lb. fterling of fyne impofed on him. (See his cafe, *supra* pages 128, 153, 176, 177.)

ANNUS 1686.

Primo Januarij 1686.—The Seſſion ſits downe again, and the Chan- No. 680,
celor comes to the Houſe with Sir George Lockhart, and installs him p. 222.
Prefident, and adminiſtrats to him the Oath of the Teſt, tho' now,
ſince his defection, he looked upon it as ane unlawfull oath, and ſo had
broken it. Some expected, that ather heir or in the Privy Counſell the
Chancellor ſhould have been proteſted againſt; at leaſt this far, that their
fitting with him ſhould not have been any homologation or allowance
of his religion, nor any derogation to their laws: but nather clergie nor
laity took the courage to doe it. (See more anent this, *infra* 5^{to} *Januarij*.)

Eodem die.—The cauſe that was firſt heard before the new Prefident, No. 681,
Richardſones, Michy and Marſhall's, (*de quo ſupra*, pag. 213;) but the p. 222.
Lords adhæred to their former Interlocutor; for the Prefident declared,
he would ſtand inviolably by the honor and authority of their Deciſions,
and not to alter what was done, but upon very weighty grounds: yea, in
cauſes wher he had been Advocat, he decided againſt his clients and
informations, to ſhow his impartiality, and what difference is between
ane Advocat and a Judge. The grounds in this caſe which moved
the Lords, beſides the Prefident's ingenuous declaration, was, 1^o That
they ware ſingular ſucceſſors; and the conqueſt was only a perſonall
oblifhment, and did not at all ty up the huſband from diſponing upon
it; tho' it was alledged, that it being ſecured by infeſtment he could
not alter it. 2^{do} The conqueſt was but *jus illiquidum*; and in deducing
ſo much of the conqueſt provided to the wife, and giving it to his
children by bonds of proviſion, in this he did no more then what ſhee
would have been compelled to have done by law; for if ſhee had
lifrented their wholle means, they would have got ane aliment from hir
by law, and ſo this bond of proviſion came but in place of that.

2 *Januarij* 1686.—Sir John Ramſay gave in a bill againſt Carſtairs No. 682,
of Kinneuchar, reclaiming at the interlocutor *ſupra* pag. 205, alledging, p. 222.

That he and his lady had only discharged what was due to hir as executrix to hir mother, but not that halfe of the annuity due to hir *jure proprio*, and so had not homologat the contract of restriction. The Lords refused the desire of this bill; and the President was clear, tho' he had been Sir John Ramfay's Advocat in this same cause, and gave him hopes of it that he might gain it.

No. 683,
p. 222.

4 Januarij 1686, being Monday.—At the Criminall Court, the King's Advocat insisted against Andrew Fletcher of Salton, who was on the 21 of December *supra* continued to this day. The libell is red of his being in the conspiracie with Jerefwode, &c., and coming over to England with Monmouth. The King's Advocat caused read his warrant to insist, with the remit from the Parliament of these proceses to the Justices; and then declared he restricted the dittay to his invading England. (See the passage anent Salton in my folio Historick Manuscript, page 109.) Then the Affise is sworne, and first Mr. Bruce is led a witnesse, and then Anthony Busse the German: The 1st depones on certain knowledge: The 2^d only described Salton, and that he heard he was a Scotsman of a good estate. Their remissions were long of coming to the Court, because Enterkin refused to seall them till he ware payed, (the Chancelor having discharged him to passe any thing gratis, but this was in the King's service.) The King's Advocat stormed exceedingly, because he behooved to shew they ware remitted and free, and under no impressiion, aw, nor fear, to depone for the King; yet they coming before the witneses had done with deponing, it ware a slender ground wheron to quarrell the forfaultor, feing men unremitted may be witneses in treason; but the Earle of Dumbarton donator to this forfaultor might look to that. Then was read a declaration of one Mr. William Williams, the Duke of Monmouth's fervant, lying in Newgate, and tane by Sir Andrew Foster, bearing that Salton came over to Lyme with Monmouth, and was very familiar with him, and was to have been a Lieutenant-Collonell of horse, but was forced to flee by his killing Dare the Goldsmith. This was only used as an adminicle. The King's Advocat having spoke to the inquest; they inclosed. Three or 4 of them,

viz. my Lord Torphichen, Somervell of Drum, Sir John Clark, and thought, that ther was only one probative witnesse, and that the stranger deponed allenarly on hearfay, and might be mistaken; yet it was carried by plurality, that he was proven guilty: So the sentence of forfaitor was pronounced against him, (on the reading of the verdict,) with all the formalities of found of trumpet, tearing his armes, reverfing them on the crosse, &c.

2^{do}. The Secret Committee had a long deliberation, if they should proceed to the forfaiting of Monmouth. The scruple was, his airs when cited ware prifoners. The King's Advocat contended this was nothing, feing the crime was nottour, and he was execute for it in England; and it was not safe to let his children at liberty, because it might prove pernicious to the Governement, if they ware afterwards made use of as the head of a faction and rebellion; and by the 135^t Act of the Parliament in 1584, they could never be admitted to impugne the forfaitor till they ather acknowledged the cryme, or got a remission. The Criminall Court not concurring with him in judgement, the tryall was, 1^o delayed till the nixt day, and then continued to the 5^t of Februar nixt; and *medio tempore*, they ware to confider if they would desire to have the children sent doune hither to the Castle of Edinburgh.

5 Januarij 1686.—Dick of Grange and Murray of Skirling is heard No. 684, in prefence; there being a wodset of some lands affected with a back-^{p. 223.} tack, under ane irritancy that it should exspire if 2 terms ran in the 3^d unpaid: Grange's mother, to prevent this, payed the back-tack duety, and before hir death assigned this to hir sone; afterwards the 3 terms failzie being like to be incurred, Grange offered to pay it: Skirling alledged he had no interest. Answered, 1^o Any may purge ane irritancy. 2^{do}. He had ane interest, for if he did it not, he would lose his former money payed out by his mother. The Lords fand he had interest. Then Skirling offered to redeim [from] Grange: The Lords fand it was more reasonable and just that Grange should be præferred, and therfor allowed him to purge the failzie; and repelled Skirling's offer of paying him.

No. 685,
p. 223.

Eodem die, post meridiem.—At the Criminall Court, Sir Duncan Campbell of Auchinbreck, and 32 mo Argile heritors, are forfaulted for joyning with Argile in his rebellion. The witneffes againft them ware the Laird of Allangreg, &c., tho' under proces of treason themfelves, (even as Tarras was when led a witneffe againft Jerefwood.) Amongst others, was Campbell of Otter whoffe eftate the King hes gifted to Comifar Maclean, fon to the Bifchop of Argile. There ware fundry appearand airs amongst theffe forfaulted, whoffe 2^d brothers ware on the King's fyde with Atholl. It ware but charity to incouradge them, to make them donators to their brothers forfaultors.

No. 686,
p. 223.

Eodem die, post meridiem.—At Privy Counfell the Toun was full of the furmifes of a designed proteftation againft the Chancelor at this his 1^o folemne appearance in Counfell, (*vide supra* 1 Januarij.) But the Archbifchop of St. Androis difcovering that the Archbifchop of Glasgou, hounded out as Queanfberrie's fhadow, intended it, he difaffented, and fo Glasgou abfented himfelfe from the meeting. They pretend, that difloyall and difaffected perfons have hitherto, under the vizard and mask of the Proteftant religion, carried on their rebellious defignes, and that fears and jealousies are no fufficient ground wheiron to difguft our Prince, or make him take up a bad opinion of Proteftants, and fo prove the more unkind unto us. Tho' the Englifh Bifchops cannot be tainted with difloyalty, yet we fee the Bifchop of London, and the reft, judged ther was more than fears in the cafe when the 1 Minifter of State in Scotland is ane avowed Papift, and yet, contrare to our laws difcharging Papifts to enjoy the meanest place of Judicatory, he poffeffes the hyeft. However *parturiunt montes nascitur*, &c. Ther was none to mutter one fillable on this point of the Proteft.

2^{do}. The Earle of Louthian, Ker, is, on a letter from the King, admitted a Privy Counfeller, and gets a penfion of 300 lb. fterling a year, which fome thought ftrange, being fo near a relation to Argile; but it hes been to ingage him for the fubfequent Parliament; tho' it was given out, that the King, when Admiral in 1673 againft the Dutch, had obferved great courage and intrepidity in Louthian, who ferved ther as

a volunteer, and he, being a great rewarder of all brave men, gave him this mark of his favor.

3^{to}. There is a letter from the King, ordaining the Protestant heritors to be pershued and fyned before the Privy Counsell, who had not taken the Test within the dayes præfixed by the [13th] A&t of Parliament in 1685. This may serve to humble and weaken that party who are looked on as secret enemies to his Majesty's succession to the Crown; but by the principles of our loyall religion his Majesty had undoubted right. See anent this *infra* 12 *Januarij*.

4^{to}. There is another letter from the King, ordaining all the absent heritors, &c., from his Host in the late raid against Argyle, to be pershued and fyned by the Privy Counsell. This has the same prospect with the former; only many of the discontented party were in the King's Host with the first, for fear of observation and suspicion.

5^{to}. Sir William Sharp of Scotscraig, and now of Stanyhill, is named and placed by the Privy Counsell to be Bailzie of the Regality of Muflebrugh and Lordship of Lauderdaill, in place of Sir William Sharp of Stanyhill his uncle now deceased. This is only till the Earle of Lauderdale agree with the Dutchesse; and then be able to appear on the head of his own affairs.

7 *Januarij* 1686.—At Privy Counsell, *post meridiem*, notwithstanding No. 690, the A&t, *supra* pag. [190,] wher our Manufactories undertake to furnish^{p. 225.} our Sojors with cloath, yet there is a propofeall now made to send abroad for it as both cheaper and better.

2^{do}. There is a letter from the King liberating the two Cefnocks out of the Basse. See of it *supra* in the beginning of October 1685.

3^{to}. There is another letter, adding 2 companies, the one to Douglasses Regiment, the other to the Garrison of the Castle of Edinburgh. Their commanders are called Oliphant and Douglas, both Papists.

4^{to}. Boid of Pinkill pershues Cathcart of Carleton, for assaulting him on the hy-way, and drawing his sword on him, and using minatory gestures. Admitted to probation.

No. 693,
p. 225.

8 *Januarij* 1686, *post meridiem*.—At Exchequer, the Hy-Treasurer produced a list of the pensions his Majesty had granted, extending to 25 persons, and wherof ther is above 12,000 lb. sterling payable to Papists; as to Lady Mary Gordon, now Countes of Perth, Ladies Erroll and Largo, Lady Margaret Hay, Lord Traquaire, Collonell Whytford, Doctor Sibbald, &c., Castlehill, Boyne, &c., had also pensions; and some in the former lists ware keipt out heir. Some of the country grudged that ther taxes payed to the King, and particularly the additionall 3 moneths fesse, should be thus distributed and exhausted amongs Papists.

2^{do}. Ther is a letter from the King, declaring, tho' his brother had given to Collonell Theophilus Ogilthorp Gordon of Earlstoun's lands, till he ware payed of 5000 lb. sterling, and that they ware annexed by the [42nd] A& [of Parliament] in 1685, yet he dissolved them from the Croun, and willed that they should absolutly belong to him. *Queritur*, If this dissolution be legall, not being in Parliament?

No. 694,
p. 226.

11 *Januarij* 1686, being Moonday.—Campbell of Ellangreig is forfaulted for being with Argile; but he relyes on a promise of the Marquis of Atholl's to get him a remission.

2^{do}. The Collectors of the King's customes, and ther Searchers, having apprehended in a ship come from London, some Popish crucifixes, beads, Priests vestments, and the furniture and ornaments of ane altar, they ware in some doubt if they should passe them, feing the A&ts of Parliament ordaine all such baggage to be seised on; yet the 25th A& in 1587 only mentions Popish and erroneous books; but Sir George M'Kenzie King's Advocat's printed Observations on that A&, acknowledges this A& hes been also used as a warrand to apprehend and confiscat such trash; but being for the Chancelor, they would not medle with them.

No. 696,
p. 226.

12 *Januarij* 1686.—The Clerk-Register Tarbet parted for London.

2^{do}. At Privy Counsell, held at 12 a'Clock, ther is a letter from the King red, wheirin he impowers his Privy Counsell to give abatement of the fynes they had imposed upon persons for church irregularities and delinquencies, if they saw cause, and that the parties merited it; provid-

ing the abatement did not exceed the halfe of ther fyne, if they payed presently, and a 3^d part in other cafes.

3^{tho}. The Privy Counsell writs up a letter to the King, in answer to that of the 5^t of Januar, signifieng that ther was many who had not refused the Test out of contumacy, but from ignorance of the dyet præfixed, the Acts of Parliament in 1685 being long of printing, and making publi& ; and therfor desiring he would allow a farther dyet and prorogation for taking it. Then, on the 28^t of Januar, ther is another letter from the King, in answer to this, that, instead of prorogating the dyet for taking the Test, (as is injoyned to Protestant heritors by the [13th] A& of Parliament in 1685,) he dispenses with the taking it during his pleasure. See more of it *infra* pag. 240.

13 *Januarij* 1686.—Being Wednesday, was the first dyet of the new Commission for Plantation of Kirks, by vertue of ther new power by the [28th] A& of Parliament in 1685; the Chancellor was absent, because his letter dispensing with the Test was not yet produced; (see it the nixt day 14 *Januarij*;) but some said, he scrupled at the Court being somewhat Ecclesiasticall, and so ane acknowledging of our Church.

14 *Januarij* 1686.—At Privy Counsell, *post meridiem*, the following letters ware produced: 1^o. A letter putting the President, Sir George Lockhart, on the Privy Counsell and Exchequer. 2^{do}. One making the Lord Rosse a Privy Counsellor. 3^{tho}. One adjoyning General Drumond to be a member of the Secret Committee. 4^{tho}. A letter to liberat Sir Daniel Carmichell, prisoner in the Castle of Edinburgh, on suspicion of his accession to Bothwell-bridge, upon caution. 5^{tho}. A letter declaring that the Chancellor shall sit in all judicatories, and continue in the administration of affairs, without taking or renewing the Test, and dispensing therewith as to him. 6^{tho}. A letter, that what cattell or other goods ware seized on by the Officers of the King's army against Argyle's late invasion, (I think this was obtained by the Marquis of Atholl,) they having been applyed to a publick use, they ought not to be liable for a restitution, nor the value. And so the King not only

indemnifies, but discharges. This was alledged to be contrare to the law of property, and so was laid aside till they should acquaint his Majesty, and wait his farder pleasure theirin.

No. 700, 15 *Januarij* 1686.—The Proctor-Fiscall of Glasgou pershues some of
p. 228. the former Magistrats, upon the pænall statuts for cutting of green wood, becaufe they had cutted doune fundry trees that grew in the Gorbells belonging to the Toune. Answered, What they did was by warrand of ane Act of ther Toune Counsell, that the trees ther being too thick, they weided them, and that the tops of thesse left behind do yet meit; that this mars no ornament or decoration of ther Toune, or its walks and avenues, they lying on the other fyde of the bridge in the Barrony.

No. 706, *Eodem die, post meridiem*.—At Exchequer, the remission of Ogilby of
p. 230. Logie is presented to be past, for killing one Lesly [a] wryter, and the King had modified the assythment to 200 lb. sterling: the widow and nearest of kin refused to accept it, and alledged, on the præcognition tane his Majesty was misinformed, as if it had been nowayes præcogitat murder; and therfor craved he might be tryed at the Criminall Court, and the probation then transmitted to his Majesty. The Lords (seing the freinds refused to give a letter of flayns) ordained the assythment to be con- signed. The King's Advocat, as our Dean of Faculty, proposed it might be given to the Advocats, for the use of the Library erected by them.

* No. 514, 21 *Januarij* 1686.—At Privy Counsell, the Maltmen of Leith and the
p. 234. † Masters of King James' Hospitall ther, contending who should have the manadgement of 2000 mks. of the Maltmen's stock mortified to that Hospitall, who craved it might be *primo loco* applyed to the maintenance of the poor of ther oun trade in that Hospitall; seing in all dotations, the will of the donor is to be followed, and ther oun poor to be præ-ferred. The Privy Counsell referred this to the Bischop of Edinburgh,

† In Fountainhall's Manuscript, the Nos. of the articles are repeated after 711. At No. 512 he says, "There is a mistake in this figure and all the following, for this should have been 712." To prevent confusion, the Nos. selected are marked with an *.

in regard it was a mortification within his oun Dioces, and the case had formerly been before him when he was a Privie Counseller; and he made a report that their poor should have the præference.

22 *Januarij* 1686.—Sir James Rocheid produces, to the Toune Coun-^{* No. 515,} fell of Edinburgh, the petition he gave in to his Majesty, shewing he ^{p. 234.} was illegally dispossessed of his place as Clerk of Edinburgh; and, when he craved entrance at the Toune Counsell door, to propone his defences, he was kept out; with the King's deliverance thereon, remitting him to the Toune Counsell of Edinburgh to repone him, if they find, after hearing all parties, that he was illegally deprived; and declares, that both in this case, and in all tyme coming, the Magistrats and Toune Counsell shall be sole judges to their Clarks; and discharges the Session or Privy Counsell to medle therewith.—This was to hinder advocations or suspension of their proceedings. On this the Toune Counsell suspend their two Clarks, and ordains all to debate before them who has best right; and, in the meantyme, Alexander Gay depute is appointed to officiate.

And, on the 29^t of Januar, the Toune Counsell goes throw the particular grounds of Sir James Rocheid's deprivation; (see of it a little, *supra* 19 *Decembris* 1684, *pag.* 119;) and such of them as they judge relevant they admit to Mr. John Richardson his probation; but he knowing they intended him no fair play, he nather made appearance nor opposition; so it was found, Sir James was deprived without probation of a fault; and so he was reponed. The removeall of appellation was scrupled at; seeing Sir James himselfe had provoked to judgement, by raising a reduction before the Lords. But he may passe from it; only ane inferior Court cannot reduce and annull ther oun decreit past upon probation; but that belongs to the Session only.

On the 5^t of Februar, the Toune Counsell, after this sort of probation tane of Sir James's innocency, they repone him, and consequently James Hamilton, to their places as Clarks; only they resolved to make it only *durante beneplacito*.

* No. 516,
p. 235.

Eodem die, post meridiem.—At Exchequer, Sir William Sharp of Scotsraig, the Archbischof's sone, being now returned from London, produced his gift from the King to be Master of his Mint, in place of Sir John Falconer, who had been deprived. Many thought Sir John justly rewarded, for prostituting so low in deponing and loading my Lord Lauderdale, the Generall, with a prospect therby to keep himselfe in his place; he had (they say) ane offer of it if he would change his religion, and he being ashamed of that, dyed shortly after at London of heart-break: his reliēt hes changed, and got favor by it. (See *supra* pag. 217 more of this Mint affair.)

2^{do}. Robert Hamilton of Presmennan is found liable, at the Hy-Treasurer's instance, for the few-dueties of the lands of Grangemuir, (which ware Kirk-lands, and payed 50 mks. of few-duety yearly to the King as superior, by the A&t of Annexation in 1587,) for 40 years back, extending to 2000 mks. (the Treasurer was so zealous he would have had it going [due] beyond prescription,) tho' he had generall Æquees, and would have turned this over upon the Ladie Belhaven, lifrentrix of the lands.

* No. 519,
p. 235.

23 *Januarij* 1686.—A motion is made, that the Advocats having a considerable stock of money, which they get by the Lords A&t allowing them to exact 500 mks. of every intrant Advocat, and the Lords being importuned by a Grecian Minister, and several others, for charity, that therfor they may take inspection how they spend ther money, and take some of it for bestowing on charitable uses. Tho' this was pretended, yet the true case was thought to be, the Popish Priests had incensed the Chancellor, that the Faculty of the Advocats had given Monsieur Du Pont, the French Protestant Minister, 500 mks. out of our publick money, and he was heard say, "What! had we nothing to doe with our money, but to bestow it on such rebels and vagabonds?"

* No. 523,
p. 236.

Eodem die.—Is past the gift of the Earle of Dumbarton, giving him the forfaultor of Andrew Fletcher of Salton, and of his estate to him, his airs and assigneyes; and he sends doune a factory and commission to his brother, Duke Hamilton, to manage the same for him.

28 *Januarij* 1686, *post meridiem*.—At Secret Counsell, the Magistrats * No. 526,
and Maltmen of Glasgou. (See it *supra* 16 *Decembris*.) p. 237.

2^{do}. Ther are mutuall complaints betuen Hunter present Proveft of Air, [who was] put in by the Hy-Treasurer, and William Cunyghame late Proveft ther, now ouned by the Chancelor, to accuse Hunter of fundry malversations, and that he came in by taking his votes to himselfe, tho' he had quarrelled Birfbane his predeceffor on the same head.

3^{tio}. Ther is a libell againft Walter Young, keiper of the Tolbuith of the Cannogate, for suffering, by negligence, some of the Privy Counsell's prifoners [to] escape by the door. He is deprived and incarcerat, and one called . . . is put in his place.

4^{to}. The King's letter anent heritors taking the Test is red. (See it already 12 *Januarij*.)

5^{to}. Ther is also a letter apart, dispensing with the Earle of Forfar's taking the said Oath of the Test; which was unnecessar, he being included in the general letter for exemption.

6^{to}. The Printers and Stationers ware, by the Privy Counsell's order, at leift the Chancelor's, discharged ather to print or fell any books reflecting on Popery; such as the Funerall of the Masse, by De Rodon, Tillitson's Discourse against Transubstantiation, &c. And a copie of this was given to every Bookseller. When it was intimate to James Glen, bookseller in the Parliament Close, he answered the Massers of the Privy Counsell, that he had one book in his chop which condemned Popery very directly, and he desired to know if he might fell it, meaning the Bible. The order ran in generall termes, that nothing should be printed or sold without a licence from the Chancelor, or the Ordinar, or the Clerks of Privy Counsell; but it was thought obvious that this was meant against Protestant books of controverfy, because they stirred up the minds of the peeple against the King's religion.

7^o. John Foster, collector of the shire of Inverness having, with some accomplices, invaded the former Collector, he is pershued heir, and also threatned with a criminall summons on the late A& of Parliament against assassinations; wheron he componed by a summe of money, and redeimed himselfe.

* No. 527,
p. 237.

29 *Januarij* 1686.—Sir John Dalrymple's confinement to 10 miles about Edinburgh, mentioned *supra*, is tane of and enlarged.

2^{do}. The Chancelor, at his new Ladies desire, takes away the Great Seall from John Cunynghame, and returns it again to Mr. Thomas Gordon wryter and Criminall-Clark.

Eodem die.—The Toune Counsell of Edinburgh names and adjoyns Mr. James Grame Advocat to be one of ther Affeffors.

30 *Januarij* 1686.—No Seffion, but kept as a Fast-day for commemoration of King Charles the I.'s murder.

* No. 528,
p. 237.

31 *Januarij* and *Primo Februarij* 1686, being Sunday.—Ther is a tumult and ryot in the Toune of Edinburgh, being a convocation and gathering of the prentice boys and rabble, against the avowed and publiſt meittings for faying of Maſſe, and other Popiſh worſhip, by diſturbing the Chancelor's Lady and others at ther ſcailling, by throwing dirt on them, and otherwayes affronting them. This was taken ſo ill, that ſome of the boyes having been apprehended, the Privy Counsell met on Mononday, and ordained a Baxter lad to be whippt throw the Canogate. While the Hangman is going about it, the boyes riſes again, beats the Hangman, reſcues the lad, and ſo continues all that Moonday night making diſorder. The Counsell calls in to the aſſiſtance of Grame's company, both Major Whyte's men in the Caſtle, and likewayes the King's foot guards; and the ſouldiers being drunk, they ſhot with ball amongſt the boyes, and killed a woman and a man, and Robert Mean the Poſtmaſter's prentice, tho' he was in no confluence at all; which ſome called a murder. Then a bauk was beaten, and all commanded of the ſtreets, and all ordained to hang out bowets; and ſome being apprehended, the nixt day a woman and 2 men were ſcourged; but to ſhow how afraid they ware of the common peeple's inclinations, they had them guarded in all the way betuixt 2 thick ranks and defiles of muſketiers and pikemen, for fear of being deforced again. One of the reſcuers called Moubray, ane imbrouderer, was apprehended,

and got ane indytment for his life. (See Sir G. Mack. King's Advocat's Criminalls, titles of Sedition and Convocation.) One asked, What the King's Advocat would answer, if the pannell should propone this defence and exculpation: "The Masse is a meiting declared treasonable by law 120, in 1592, &c., I was only dissipating such ane assembly; if it had been a phanaticall conventicle I would have got thanks; *ergo* the disturbing this meiting at leift merits not death." The Court party gave it out for a great ryot, and of bad example; so that Queansberry said privilie, he, by their descriptions, would have beleived it to have been worse then Masaniello's Napolitan insurrection, had he not seen it. Our Bischops and others wilfully dissembled, as if they had been ignorant of the rise and cause of it. A Drummer is delated by 2 Papists for drawing his sword, and saying, he could find in his heart to run that throw them; which they expounded of the Papists, but himselfe said, he meant the boyes. A Granadier was remitted to a Counsell of War, for saying he would not fight in that quarrell against the Protestants, for he was sworn to that religion. One Littlejohn was examined for speaking against the Papists; but, on the representation that he was sometimes mad, he was dismissed.

Doctor Sibbald was so feared that he deserted his owne house, wher they had been searching for him, and fled to the Abbey, and on Wednesday, in a panick fear, went for London; the Chancellor having allowed him 3 of the King's Guard some way out of the Toune.

The Treasurer and his faction aggravated this tumult mightily, of purpose to irritate the Chancellor to take some rigorous course, and to put them to extremeties; but the Chancellor was advised to carry moderate, leift it should mar his designs of advancing Popery. But as Spotswood, in his History *ad annum* 1596, page 432, on the tumult then raised, observes, from Tacitus, that all such attempts when crushed advance the soverainety; so it is to be feared, that this may further the Popish designs without controll, and be ane argument in Parliament to crave ane Act rescinding all the Pænall laws against them, that they may live securely amongs us. But some thought strange, to see our Judges and Statesmen, who ware bound by law to suppress the Popish

meetings, yet, to please the Chancellor, they protected them. (See in Knox's Chronicle, the tumults and uproars made in the beginning of our Reformation of Religion against the Masse, and Seminary Priests, and the carrying of St. Giles throw Edinburgh, which the rabble broke: it's anno 1555, page 104.) See the 5^t A&t of Parliament in 1567, against hearing of Masse. But the A&ts of Parliament on which our Judges proceeded to punish this tumult, ware (without considering the occasion of it, in Quein Marie's reigne,) A&t 83 in 1563; A&t 184 in 1593; and A&t 17 in 1606. (See more of this, *infra* 26 *Februarij*.)

* No. 529,
p. 238.

2 *Februarij* 1686, being Candlemasse-day.—The case betuen the Royall Colledge of Physitians in Edinburgh, and George Stirling Chirurgical-Apothecary, was debate; wherin the Toune of Edinburgh compeared and clamed, 1^o The presidentship in the meiting. 2^{do} A negative in judging the Chirurgical Apothecaries, ther burgeses; wher it was represented against the Physitians, that power was inebriating, and therfor thir gentlemen, tho' very worthy persons, are ready to abuse it, not being accustomed to it; and it may degenerat the sooner to oppression and tyranny, that they are concerned; therfor ther power was limited; 1^o The Lothians ware all cut of. 2^{do} The Univerfities are reserved. 3^{tio} The Toune of Edinburgh; and 4^{to} The Chirurgical-Apothecaries. So that their patent is like thosse rules, wherof ther are *plures exceptiones quam exempla*; what is left them is mainly amongs themselves, to regulat ther oune delinquences; like Tityus feeding, by the Poets, on his oune liver: The Magistrat sits with the Minister in the Kirk-sesson, yet he takes place of the Minister; tho' he be only his concurring assistor, and the Minister preside. In such a concurse the oldest jurisdiction, the largest and the most honorable most have the precedency. (See Sir G. Mackenzie's Precedency, Quæst. 5^{ta}.) The Magistrats have mo dignities, viz., of Sherif, Justices of Peace, &c.; the Physitians have but one. The Physitians are but *Judices pedanei*, and have but *notio et audientia*, and have but a limited power, restricted to assume, and to call the Magistrats, and to use and implore ther *brachium*, for putting ther decreets in execution: And this 3 fold cord of the Toune's preference, so strongly

tuisted, ought not to be easily broken. The Toune are Shirefs a 100 years for every year the Doctors are a Colledge, it being only 3 or 4 years since their erection. The Toune in a competition betuixt them and the Colledge of Justice, about the precedency in the electing a Humanity Regent in the Colledge of Edinburgh, got a letter from the King in 1667, by Sir Andrew Ramfay then their Proveft's procurement, determining ther Proveft should have the same place and præcedency within the Toune's precincts that was due to the Maiors of London or Dublin, and that no other Proveft should be called Lord Proveft but he; and now the Mair of London when he is in the King's Bench, he presides before the Cheiff-Justice. So it does not hinder his precedency, that he is not versant in the subject matter; for then the Colledge of Justice understood Greek and Latin to choise a Regent, by [far] better then the Proveft did, and yet he presided.

The President drew it to this question, Which was the principall jurisdiction, and which the accessory? Whither the principall lodged in the Physitians, (seing they called the meiting, and it was anent a subject of their trade,) or in the Toune, who had the first, the amplest and oldest jurisdiction, and ware ordained to execute their sentences, and to direct precepts theirupon? And the *præfectus urbi* at Rome was equall to the *præfectus prætorio*. Vide Legem 1, c. de *præfectis prætorio*, &c. Libro 12, Tit. 4^{to}.

The Lords having advised the debate, fand that, by the patent granted to the Colledge of Physitians, the Magistrats of Edinburgh have not a negative, but that the Colledge may proceed, albeit the Magistrats be not present, or being present doe not concur; intimation having been made to them to be present; and this, notwithstanding that clause of the patent, that it shall not be lawfull for them to fyne a Chirurgian-Apothecary of Edinburgh without the consent of one of the Magistrats of Edinburgh who shall be present *et affidebit*: And find, That the right of precedency does belong to the Colledge of Physitians, and not to the Magistrats, albeit the procedure be against Chirurgian-Apothecaries, burgeses of Edinburgh. See the Informations in this cause.

The Lords ware also thinking for redding of marches, to decide thir

points : 1^o. That for diseases not originally internall, (as their patent distinguishes,) a Chirurgical-Apothecarie might, without a Physitian, undertake the cure thereof, wher they arose from ane externall cause, and was not yet come to be a formed and stated disease. 2^{do}. Wher they are bound to call a Physitian, if the requisition of one be sufficient, or in case he come not, they be oblidge to call another, and so goe throw them all? 3^{tio}. What they shall doe in case of patients who absolutly refuse to call a Physitian, either throw poverty or a natural averfion? 4^{to}. What shall be the Chirurgical-Apothecarie's carriage, if it be only a work of charity or necessity; must he stand ane idle spectator till a Physitian come? The Chancellor said, Baptisme in the case of necessity might be administrat by any. The King's Advocat seeming to despise the similee, the Chancellor took it very hot, as a contempt. See *infra* more, pag. 247.

* No. 532,
p. 240.

4 *Februarij* 1686, *post meridiem*.—At Privy Counsell, ther is a letter sent to the King, desiring him to explain, If he meant (*supra* pag. 226) that the 3^d of the fynes was only to be abated, or the 3^d was only to be exacted? And, upon the occasion that some of the Clidfdale gentlemen ware fyned above their estates, Duke Hamilton and the King's Advocat falling hot, the Duke rudely threatned to cause crop his ears, tho' he was ane Officer of State.

5 *Februarij* 1686.—At Exchequer, ther is ane A& made for rousing the wholle inland Excise, and the Lordship of Orknay and Sheitland, on the . . . day of March. But we shall see Queansberry put of ere then.

* No. 534,
p. 241.

6 *Februarij* 1686.—John Strachan, Wryter to the Sygnet, having reflected on my Lord Forret, as if he had not done him injustice in a cause depending before him against one Pearson; as also, in bills and informations to the Lords, having reflected on Mr. Patrick Lyon, Advocate; ther is a complaint of defamation given in against him, for saying that Mr. Patrick attempted to assassinate him; and nothing being so dear to ane Advocat as his reputation, nixt to his conscience, he craved he

might ather prove it, or else be punished for the sclander. The Lords finding the injury proven *scripto*, and that he declared ther ware no witneses present when Mr. Patrick threatned him, they sent him to prifon to ly ther, till they should confider what furdur punishment to inflict on him; and, if he had not submitted and craved pardon, they ware resolved to deprive him; however, he was liberat on a sharp rebuke.

8 *Februarij* 1686, being Monday.—At Criminall Court, two are pan-<sup>* No. 535,
p. 241.</sup> nelled for being accessory to the late tumult, wherin some ware killed; (see of it *supra* pag. 238;) and for rescueing the Baxter lad from the Hangman when he was to be scurged. The Lords fand the ditty relevant to infer the payne of death, tho' he had no armes; in regard the King's Advocat adduced 2 instances wher the same was found: 1^o In the tumult against Sir Walter Seton. 2^{do} In Lermont's case in September 1678, when one Hog was killed by the Conventiculars. Some demurr was among the Lords, whither the libell should be found relevant to infer the payne of death, or only to put the pannell's life in the King's will and mercy. Ther accession being proven, the Affise returned them guilty, so they ware condemned to be hanged on the 10^t of February: But the Privy Counsell which fate on the 9^t day, repreived them to a longer day, that they might obtain a pardon; for they thought not fit to irritat the Mobilee too much. (See *infra* more of this 26 *Februarij*.)

9 *Februarij* 1686.—Sir Alexander Home of Renton gave in a bill<sup>* No. 536,
p. 241.</sup> against Sir Patrick, his brother, complaining that he had caused louse out fundry sheets in ane A&t of litifcontestation betuixt them, and insert new sheits therin, with alterations. This being a forgery of a hy nature against ane Advocat, Sir Patrick gave in a counter bill, craving it might be tryed, he vindicat, and the drawers of the bill censured, (which was Sir John Dalrymple.)

Eodem die.—Ther is a letter read to the Lords from the King, pro-<sup>* No. 537,
p. 241.</sup> cured by the Lord Maitland, (who had got this favor by the Priests for changing his religion to serve a turn,) against the Dutchesse of Lauder-

dale, altering his former letter (*supra pag.* 236) this far, that for the standing of the family of Lauderdale they may submit the affair to some of the Lords, who may determine to her a reasonable joynture; and which of the 2 refuses to stand to the determination, his Majesty will not countenance them: see the double of the letter beside me. This shee took in very bad part; and the President loves not this way of ruling the Session by letters. Shee choised the President and Harcous; Lauderdale named Castlehill and Pitmedden; and the Chancellor was to be Overfman.

* No. 538, *Eodem die.*—At Privy Counsell, ther is ane A& made in regard of
p. 241. the late tumult, that all Masters of families, especially tradfmen, shall inact themselves by a bond for ther servants and prentices, that they shall not be present, nor joyning in any tumults or uproars, under the penalties of such fynes as the Privy Counsell shall impose. (See the copie of the Bond *apud me.*) And, because it was informed, that some Wryter lads ware also accessory, the Keipers of the Signet ware called for, to intimat to the Wryters to be liable for their men.

* No. 543, 11 *Februarij* 1686.—At Privy Counsell, in the Toune of Air's case,
p. 242. *supra pag.* [237,] the Lords annulls Hunter's election, carried by his oune 2 votes; and remits them back to a new election of a Provest.

2^{do}. Ther are complaints of oppreffion betuen the Magistrats of Culros and Sir Alexander Bruce of Broomhall, as that they had, at ther oune hand, proclaimed a formall indemnity for byganes of all the Pænall statutes.

* No. 545, 12 *Februarij* 1686.—The Chancellor moved to have
p. 243. adjoyned to be keeper of the Parliament House, with George Falconer, put in by the late President now forgotten, and contended that place belonged to his due. See *infra pag.* [249] David Logan put in.

* No. 546, *Eodem die.*—Sir John Falconer, late Master of the Mint, having
p. 243. deceassed at London, his escheat is craved at Exchequer by his Lady

on hir contract of marriage, and by the Lady Traquaire on a horning of hir ounge, &c. But the Hy-Treasurer was not present this day at the Exchequer, because he was to communicate the Sunday thereafter in the Abbey-Church; and he was commended for publicly owning his religion at such a tyme.

Eodem die.—The President falls on a new method of getting back * No. 547, p. 243. processes on complaints, That the pershuar complainer give in a dollar with his complaint, and the defender's Advocat, if he be found to have kept it up longer then the tyme, must re-deliver it with another dollar, to be exacted by the Maisters for the poor's box, and the complainer's dollar is given him back if he had just cause.

Eodem tempore.—The Lords, in the case betuen on * No. 549, p. 243. Kemnays report, fand a summons of transferring could not be summarily called like ane act, but behooved to be seen and returned, but neided not then abide the course of the roll.

15 *Februarij* 1686, being Moonday.—At the Criminall Court, the * No. 552, p. 244. King's Advocat now insists in the forfaitor of the late Duke of Monmouth, in regard the King having put it in the Dutchesse hir option ather to goe with hir children to Scotland to be present at the tryall, or else to fend a commission and letter of Atturney to Lawyers to appear for hir, and alledge what was proper for hir: Shee chused the last; and both gave ane warrant to Mr. Thomas Lermont, Mr. James Grame and me, to appear for hir *procuratorio nomine*, but also a letter of the same tenor directed by hir to the King's Advocat; but tho' the Advocat's letter was recorded, yet the Criminall Lords refused to register our commission, and declared if we protested that the doom of forfaitor against hir husband should not prejudice hir just right to the estate, shee being fiar of the lands, they behooved to repell it as not being *hujus loci*. We then refused to appear at all. So the tryall went on; and they proved by Bruce and Buffle the witnesses, *supra* led against Salton, thir 3 points, the Duke of Monmouth's invasion at Lyme and

Taunton; his assuming the title of King; and his touching the cruells *jure coronæ*; wherupon he was found guilty by the Affise, and condemned.

* No. 554, p. 244. 16 *Februarij* 1686.—The Archbifchop of St. Androis and Bifchop of Edinburgh part this day for London, in the retour coach which had, the week before, brought doune the Marquis of Athol and Sir William Bruce from thence: their earand to Court was, to give the King affurance they would comply with his defire of tolerating Popery.

* No. 555, p. 244. *Eodem die, post meridiem*.—[At Privy Counsell,] ther ware 2 letters from the King red, one anent the late Tumult, declaring he refented very warmly any injury or attempt againft his Chancelor, whom he would proteft to the uttermoft, and commanded them to make ftri& fearch into the authors of it by torture or otherwayes; and accordingly they named 2 Committees for examining it, one of Privy Counsellers, and the other of Officers of the Army; and becaufe a landlady neir Heriot's-work had caufed poind the preffe and other goods of one Watfon, a Popifh printer ther, for his maill, this was made a combination, and his goods violently tane back and brought doune to the Abbey, and he protefted ther. It was faid, ther was alfo a privy letter from the King to the Chancelor, checking them for ther too open Maffes, and recommending to them to be more cautious and private.

The 2^d letter was anent the Gentlemen fyned, fufpending the exa&tion therof, and allowing them to be fet at liberty on caution; and as to theffe who ware imprifoned and fyned for ther wives conventicles and irregularities, they ware allowed to be difcharged, wher they ware knowen to be of loyall principles themfelves. This letter was procured by the Chancelor againft the Treafurer's will; who had affured the King, his army nor penfions could not be payed if theffe fynes ware remitted. On this many ware liberat on bail to appear againft the 1 of Aprill.

3^{tho}. The Chancellor moved, that notice fhould be taken of a feditious fermon, preached the Sunday immediatly before, in the Hy-Church, by

Mr. Canairies, lately Popish, and now Minister at Selkirk. He had given his opinion freely against Popery, that no man without renouncing his sense and reason can embrace sundry of their articles, such as the Pope's Infallibility, Transubstantiation, &c.; tho' the Papists say, this is to lean to reason with the Socinian, and to deny the mysteries of the Christian religion: but how shall a Turk or a Pagan be converted but by his senses; to tell him bread is flesh will make him repute us mad. Claverhouse backed the Chancellor in this, but there being a deep silence in all the rest of the Counsellors, it was past over at this time; but he was afterwards both suspended, reponed, and *pro 2^{do}* suspended. (See this Sermon in print.)

4^{to}. Mr. Alexander Ramsay, Minister of Edinburgh, was also at this time silenced by the Bishop, for speaking of the fears of Popery; but afterwards he was reponed.

5^{to}. Durhame of Omachy feiking an aliment from a lifrentrix, the Lords, in regard there intervened a civil point of right, remitted it down to the Session as the Judge Ordinar.

18 *Februarij* 1686, *post meridiem*.—At Privy Counsell, John Weir of * No. 559,
Newton's petition is considered; and, in regard the Articles of Parliament p. 247.
had præcognosced his objections of *minæ et inimicitie capitales*, vented by the witnesses, viz., Hamilton of Gilkerfcleuch, Symonton, and Bailzie of Littlegill's brother, and found them proven, they set him at liberty; and ordained the Lords of Justiciary (tho' some alledged this was to impose upon the Justices, who were a soveraigne Court,) to desert the dyet *simpliciter* against him. The Hy-Treasurer and his party opposed this; but lost it.

19 *Februarij* 1686.—The Physicians of Edinburgh against George * No. 563,
Stirling, (see it *supra* pag. 239,) reported by Edmiston; the Lords re- p. 247.
mits the cause back again to the Colledge of Physicians; tho' it was not in an advocacy, but a suspension of a decreit; because the Lords thought Physicians would understand to judge delinquences in physick better than they.

* No. 564,
p. 248. *Eodem die, post meridiem.*—The creditors of Dundy against Lauderdale is farther advised, (see it *supra* pag. 231 ;) the Lords fand, that, in Edgar's infeftment, the creditors moft prove the few was fet with diminution ; tho' in Arbuthnot and Din's cafe, 5 *Januarij* 1681, in my folio Law Manuscript [E,] the donator was burdened, becaufe he impugned the few ; and not for the reafon in the decreit, becaufe it was a negative.

On the 23^d Februar, then, the Lords loufed the probation of the rentall, and allowed of a new mutuall probation to both parties theranent. Item, it being voted, whither the price formerly modified by the Lords for the chalder fhould be re-confidered, it flood *in æquilibrio*, and came to the Chancellor's vote, who fuperceeded to give it.

* No. 565,
p. 248. *Eodem die.*—Ther is a gift pafst by the King to my Lord Chancellor of 8000 lb. fterling, out of the firft and readieft of the wairds and marriages.

2^{do}. A penfion to Mr. Thomas Gordon of 100 lb. fterling a-year, for his pains in the Jufticiary Court and Circuits.

3^{tio}. Sir Archibald Cockburne of Lanton, upon ane adjudication, paffes a fignator of the Earle of Home's eftate, with the Sheriffship of the Merfe.

23 *Februarij* 1686.—The Drummer is this day fhot in the Links of Leith by martiall law, for faying, He could run his fword thro' all the Papifts ; tho' he denyed thefe words to his laft ; yet he declared, he would not redeem his life by turning Popifh. The 2 witneffes that deponed againft him ware Papifts, viz., Irving of Bonshaw, &c., who, falling out fince, called one another perjured ; tho' our law rejects Papifts from witneffeing : But that is wher they are declared and convict. (See *supra* 1 *Februarij* for this.)

* No. 566,
p. 248. *Eodem die, post meridiem.*—Ther are 2 letters from the King red at Privy Counfell ; one indemnifeing all depredations, or taking of cattell, &c., during Argile's late invafion. This was in favors of the Duke of Gordon and his men.

2^{do}. A letter, calling up one Mr. Griffith, a prisoner tane with Argile, ane English Presbyterian minister's sone, to be put in the yaught, and to be delivered to the Secretaries at London for some discovery.

Eodem die.—Mr. John Richardson being turned out from being Clark of Edinburgh, enters Advocat, on a bill by the Treasurer's recommendation.

2^{do}. The Chancellor causes the Archbishop of Glasgow suspend Dr. Canaries, for his Sermon mentioned *supra*.

24 *Februarij* 1686.—This being the last Wednesday of the moneth ther was no Session, but a publick fast for the anniversary Seid-tyme.

25 *Februarij* 1686.—The Maltmen of Leith's bill, *de quo supra pag.* * No. 569, [234,] being adviced; the Lords ordained ther mortified money to goe *primo loco* to the intertainment of ther ounie poor in that Hospitall. p. 249.

2^{do}. Ther is ane order from the Privy Counsell to the shire of the Meirns, to elect a new Commiffioner to the Parliament, in place of Prefident Newton deceast: This was procured by the Lady Erroll, to get Pittarro chofen; tho' *infra* Halgreen carried it.

26 *Februarij* 1686.—David Logan merchand, by the Chancellor's favor * No. 570, and Blair Drummond's, is conjoyned in the keeping of the Advocat's gouns and Parliament Houfe with George Falconer, (his patrone being now dead,) and he had been put in joynt with Walter Cunyghame, and *quod quisque juris in alium, &c.* p. 249.

Eodem die.—At Criminall Court, Keith, a Fencing Master in Edin- * No. 571, burgh, is condemned to be hanged for uttering words approving the p. 249. late tumult, (see it *supra* 1 *Februarij*, and the Acts of Parliament they founded on,) and faying, If the Trades lads would fall upon the Toune Guard, he should secure ther Captain P. Grame for his part; and for drinking to the confusion of the Papists; tho' at the same tyme he drank the King's health, and feimed to exculpate [himself,] and signify

clearly that he did not include the King. Much application was made to save this poor man's life; for the witnesses were *socii criminis*, and guiltier than he, having spoke the words themselves, and he only assented; (so men may easily be ensnared by such coy-ducks;) yet the Chancellor was inexorable, and beat his own son for pleading for him: he behooed to die to terrify others, and so he was hanged on the 5^t of March at the Croffe, and dyed piously in much composure: and was delt with to load Queanberry with accession to the tumult, but refused. He had been the Earle of Kintore's man.

- * No. 572, 27 *Februarij* 1686.—Tarbet arrived from London, having adjusted our p. 249. Parliament affair anent the exercise of Popery, and assured the King it would doe.

Eodem die.—At night happened *mors carissimæ meæ Conjugis, mihi amarissima et luctuosissima*; so ther is litle to the 10^t of March, I not having come abroad till then. [In margin] *Nota, non obliviscenda.*

- * No. 573, *Primo Martij* 1686.—Moonday, at Criminall Court, Boyd of Pinkill p. 250. pershues his brother Thomas for perjury.

2^{do}. Johnston of Lockerby, ane old man, is pannelled for adultery. Both deserted.

- * No. 574, 2 *Martij* 1686.—A Privy Counsell is called extraordinary in the morning for reading his Majestie's letter, laying aside the Duke of Queanberry from being sole Hy-Treasurer, and resolving it into a Commission of 5, viz., Chancellor, Queanberry, Duke Hamilton, Tarbet, and Generall Drummond; and making Queanberry President of the Privy Counsell, with a pension; which was first to break his head, and then to put on his kowll; for he expected to be turned out, but did think they would have waited till the Parliament was over; but we shall find him wholly degraded then. And ther is adjoyned to Hew Wallace Cash-keeper, Alexander Milne of Carrine, late Provest of Lithgow, and James Caddell of Muirton, under the name of Receavers; and it was said, as soon as

Hew made his accounts, he would be difmiffed. And ther is a Commiffion to 9 to examine, approve, or improve ther accounts as they fee juft: See my octavo Manuscript of Seffion Occurrents at this day. Thus fell a great proud man, litle regrated.

On the 4^t of March the whole Commiffioners of the Treafury, except the Chancellor, take the Teft at Privy Counfell.

4 *Martij* 1686.—At Privy Counfell, the narrative of the late tumult * No. 576, againft the Maffe is extended, and fwelled to a great bulk, and fent p. 250. to the King. Being red in Counfell, one part boor, fome had fpoke contumeliously againft our Lady, which was scored out, and the Virgin Mary put in. One defigne was, to load Collonell Douglas as negligent, and to get Claverhoufe in his place.

2^{do}. Maxuell of Kirkhous perfhues Jean Crighton his mother, now fpoufe to Mr. John Eleis of Eleifton, for ane aliment, in regard fhee had 100 lb. fterling of joynture of his fmall eftate. It was urged, this might be fent to the Judge Ordinar; yet the Lords, by Nithfdale's moyen, remitted it to Colinton, &c., to try the affair; and, to fhun trouble, fhee quate him 500 mks. of hir lifrent yearly.

11 *Martij* 1686.—Young Caddell invades and affronts the Lord Boyne, * No. 580, at 12 a'clock as he comes from the Seffion-houfe, by fpitting in his face p. 251. on the Hy Street. See this cafe, and the Acts of Parliament relative to it, in my 8^{vo} Manuscript of Seffion Occurrents at this day.

Eodem die, post meridiem.—Is the King's letter, making the Duke of * No. 581, Gordon Captain and Conftable of the Caftle of Edinburgh, in Duke p. 251. Queanberry's place, read, and he admitted without any oath, being a Papift.

2^{do}. The Earle of Lauderdale, on a letter from the King, is re-admitted on the Privy Counfell again.

23 *Martij* 1686.—Ther is a letter from his Majesty to the Seffion, * No. 589, ftopping that proces betuixt the Earles of Lauderdale and Aberdeen p. 253.

anent the Mint decreet, and the concuffion and extortion of the bond, *fine die*, but during his Majestie's pleasure. This was complained of as *peffimi exempli* to property; yet they founded on the [18th] A& of Parliament in 1681, giving the King a cumulative power to evock any caufe; and that this was his oune, and a gift flowing from himfelfe.

* No. 590, *Eodem die*.—The Dutcheffe of Lauderdale againft the Earle therof, p. 253. the King, *supra pag.* 241, remitting them to Arbiters, the fame deserted without any agreement, fo fhee infifted. Alledged, The proces was fleiping more than year and day. The Prefident repelled this, becaufe it was ftopped and interrupted by the King's letter, and fo fhee was *non valens agere*; tho' the firft letter and ftop was obtained by hirfelfe. The treaty was renewed again.

* No. 599, 26 *Martij* 1686.—This morning the Duke of Hamilton, the Prefident p. 254. of the Seffion, and Generall Drummond, part for London, being called thither by the King to receave his commands anent the Parliament; becaufe the 1st two showed fome averfion in the Secret Committee to consent to the refchinding the pænall laws againft Popery; and the Chancellor had procured their upcalling, to cajole them over their fcruples.

2^{do}. The Earle of Strathmore being new arrived from London, is, on his Majestie's letter, admitted ane extraordinar Lord of the Seffion, in place of his brother-in-law Midleton, who refolved to be ane Englishman.

3^{tio}. The Lords fufpends Mr. Edward Wright advocat, from the exercife of his office during their pleasure, becaufe he had given fome rude langage to my Lord Pitmedden: And this following on the back of Caddell's bufines with Boyne, the Lords called in the wholle Advocats, and intimat to them, that it was *mali exempli* to their clients if they fhould carry indifcreitly to the Lords.

* No. 601, 29 *Martij* 1686, Moonday.—At Criminall Court, p. 255. fouldier in the Earle of Mar's Regiment, is pannelled for killing one Sloffe, a Meffenger, out of revenge, becaufe he had poinded his houfe fome dayes before for a debt. He is convi& (and not judged by his

officers,) and condemned to be hanged, but this being Passion-week, the execution was delayed till Wednesday the 7th of Aprill.

Eodem tempore.—A letter comes doune to the Royall Burrows from Secretary Melfort, signifieng, that the King desired to know what shipping belonged to each of them, in regard he resolved, by his prerogative, to give them a free trade with England; which many thought could not be done without ane A&t of Parliament ther: But this was tryfted now to amuse and flatter the Burrows into a compliance with the Statf-men's desigine of tolerating Popery.

2^{do}. To the same end, the Duke of Queanberry then got a letter from the King, full of gracious expreffions, that he would never forget the many services he had done him.

30 *Martij* 1686.—Mr. John Richardfone having refused to pay or * No. 602, give security for 1000 mks. for his entry *per saltum* as ane Advocat, conforme to the A&t of Sederunt, the King's Advocat as Dean of Faculty applyed to the Lords, and he was called in, *in præsentia*, and ordained by the Lords to satisfie the Faculty; and ane new A&t confirming the Advocat's priviledges is made therupon. p. 255.

2^{do}. Orknay and Shetland is fet by our new Commiffioners of Treasurie to Craigie of Gairfay, fo he becomes Stewart therof; it's for 5 years, at 2000 lb. sterling per annum. Magnus Prince and Dean of Gild Murray are his cautioners. The King's Customes are also then fet to Sir Robert Milne, &c.

31 *Martij* 1686.—Two yauchts arrived at Leith with the Earle of * No. 608, Dumbartan's men, which the King had sent doune; and, within 8 dayes p. 257. after, Douglass's regiment went up in them to London.

Eodem 31, seu ultimo Martij.—The Archbischop of St. Andrews, and the Bischop of Edinburgh, retorne home from England; and the first is put on the Secret Committee; and the 2^d reponed again to the Privy Counsell, and a pension given him of 150 lb. sterling a year, with a letter, declaring

the payment of the 50 lb. sterling per annum by him to the Prebanders to cease, in regard they did not officiate in the Cathedral: So, on the matter, he got 200 lb. sterling a-year for his compliance. The Bishop of Edinburgh also procured himselfe [to be] created, by a gift from the King, Chancellor of the Colledge of Edinburgh, whereby he aimed to reach Dr. Monro, the Principall, on plurality of benefices, being also a Minister of Edinburgh: The King also gave him the gift of the liferent-esccheat of William Hay, Comisair-clark, that thereby he might turne him out of his place; he having a proces depending against him for deprivation on malversations.

Eodem tempore.—The Shireffship of Argyle is tane away from the Marquis of Atholl, and was said would be given to Stewart, Shiref of Bute.

2^{do}. The Earle of Murray his Comission to represent the King in this next Session of Parliament as his Hy-Commissioner comes doune, and passes the Sealls, and bears an expresse power to dissolve the annexed forfeited lands from the Crowne; for Melfort had got many of the un-annexed forfeited estates.

VACANCE.

* No. 609, 8 *Aprilis* 1686.—Thomas Kennedy, Provest of Edinburgh, on a letter p. 258. from the King, is knighted by the Chancellor.

9 *Aprilis* 1686.—Sir John Nisbet of Dirleton late Advocat, passes an Infeftment of his lands at Exchequer, wherein he changes his waired-holding to blench, and makes the duty only 4 lb. Scots yearly, (which some thought not secure,) and takes it to his daughter the Lady Harden's heirs, which failzeing to his owne heirs and assignees whatsoever; afterwards he put it by his daughter.

* No. 610, 13 *Aprilis* 1686.—Both the Convention of the Royall Burrows, and p. 258. the Synod of Edinburgh met.

There was a paper posted on the Convention-door, advertising the

Members to beware of Kennedy Proveft of Edinburgh, and of Alexander Miln of Lithgow, who ware to lead them to perjury by breaking the Teft; fo that to begin, fome caufed the reft take the Teft who had not been formerly Members: And the King's letter, mentioned *pag. præced.*, to the Royall Burrows was red, and they returned ane anfwer, intreating his Majefty to impower his Commiffioner to reftore ther privileges, invaded by the Brughs of Barrony and Regality, and to procure them a free trade with England: And accordingly the Commiffioner mentioned theffe particulars in his fpeech; but the Burrows mifbehaving to the Court, none of theffe things ware performed to them.

As to the Synod, Profeflor Strauchan had the *Concio ad Clerum*, who much preffed toleration to all as differed from us in judgement, infinuating a charitable accommodation with the Papifts, and cited the two Reynolds bretheren. The peeple ware fo diffatiffyed with him, that they withdrew from his church therafter. The Bifchop in his fpeech told them, that the King would gratioufly defend our religion, but only craved the exercife of his oune, to theffe of his oune perfuafion, in private, without hazard of the laws; which, he faid, could not be denied him, becaufe he might take it by his prerogative of the Church Supremacy, afferted by the 1st A& of Parliament 1669. He told, that the Archbifchop of St. Andrews and he had got ane ample commiffion to fufpend and deprive, by themfelves alone, any who preached fedition, tho' they fhould be Bifchops. And Mr. George Sheill, Minifter at Pref-tonhauch, having preached rudely againft Popery in the Abbay-Church the Sunday before, he was fharpely reprooved; tho' he faid, 1^o That he had obeyed the Bifchop's old instructions, allowing them to preach againft Poperie, fpairing perfons. 2^{do}. That a ridiculous religion might be treated in ridicule; for he had faid, the Pope was as litle infallible as the Bifchop of the Ifles, who was one of the fillieft Bifchops in the world; and that he would beleive the moon to be made of green-cheefe, and fwallow Arthurfeat, as foon as beleive Tranfubftantiation. The Bifchop asked, Why doe ye not preach againft Mahumetifme, Socinianifme, &c., as weell as Popery? efpecially wher ther ware no Papifts in their parifhes. But the danger from the one is not by far the fame that

is from the other. Then the Bifchop, by a ftri& A&, prohibited them to employ any in ther pulpits of Edinburgh, or the fuburbs, without his licence.

15 *Aprilis* 1686.—Mr. David Scrymgeor is imprifoned anent the Dutcheffe of Monmouth's affairs.

26 *Aprilis* 1686.—The Earle of Murray Commiffioner arrives at the Abbey; Duke Hamilton, the Prefident, and Generall Drummond comes the nixt day.

THE PARLIAMENT SITS DOUNE.

* No. 611, 29 *Aprilis* 1686.—The Parliament fat doune. The prayers are faid
p. 259. by the Bifchop of Edinburgh this day, and throw all the reft of this Parliament.

The full Rolls are called. Sutherland and Lovat proteft for precedence: The firft againft all the Earles, and the other againft all the Lords, called before him. The Commiffioner's patent is then red, and any new Members who had not been present at the former Seffion of Parliament, doe now take the Teft. The Lord Forrefter of Corftorphin, offering to come with the reft, was objected againft by the King's Advocat, as not having right of Peerage, the laft Lord's patent being but temporary: So he was defired to forbear till he cleared his title. Then the King's letter was red, and the Commiffioner had his fpeech, (both which fee in print;) and a Committee is named for drawing ane anfwer to the King's letter, for to present to the Articles, to prepare it againft the nixt dyet of Parliament. And ther being 3 [Lords of the] Articles dead fince the laft Seffion, viz., Prefident Newton, Generall Dalzeell, and [John Boyle of Kelburn,] the Commiffioner named 3 in ther place, viz., Generall Drummond, my Lord Drumcairne, and Innes of Cockfton: Some faid this nomination of his fhould have been questioned as a wrong ftep, and ane ufurpation not due, but fhould have been choifen by the Nobility and Bifchops. Some he alfo adds to the Committee for

debaiteable elections; and they are ordained to meet on the 30th of April; and the Articles to meet the 4th of May, and the Parliament on the 6th of May. Provest Drumond was delt with to dimit, that Provest Kennedy might be elected for Edinburgh; but he refused, and so fate.

Then prayers was said again at the scailling. My Lord Maitland carried the purse before the Commissioner, whose daughter, with the Lady Maitland and other Ladies, ware in the Parliament-house this day, behind the Throne.

This day being full-moon, ther was a conjunction of some of the Planets, so it was a very rainy day, and it continued long foul thereafter, almost all the summer thorow; hence some called it, the black rainy Parliament.

30 *Aprilis* 1686.—At the Committee for debatable Elections, Sir * No. 612,
David Carnaigie of Pittarro, and Rait of Halgreen's election for the p. 259.
Merns is remitted back again to a new election; because, 1^o The Shiref-depute had no right to vote. 2^{do} The Heritors ware called by a Valuation-roll. 3^{tio} They did not take the Test, on the pretence they had tane it at the former election.

Primo Maij 1686, being Saturday night or Sunday morning.—Mr. * No. 613,
James Young, sone to Andrew Young Wryter to the Signet, is apprehended by Captain Grame, and keiped in the Court of Guard, being p. 260.
delated as a copier and disperfer of a paper, containing Reasons why the Parliament should not consent to the dispensing with the Pænall Laws against Papists, and reflecting in the end on such Protestants as had apostatized; and for having verses against the two Bischops of St. Andrews and Edinburgh. And he having, on his examination, named John Wilson and John Nasmith my servants, as bringers of thesse papers to his chamber; the Chancelor signed ane order to Captain Grame to arreist them two, apprehending possibly to reach myselfe for libelleing, as he termed it; when I went and desired to know of his Lordship, why my men ware imprisoned in the Tolbuith of Edinburgh, which was on the 3^d of May. But they having named ther authors whence they had them, they ware liberate; and ther authors, viz., Mr.

John Eleis, Robert Keill, &c., were cited. Some asked, How far it consisted with the privilege of Parliament, that a Member of Parliament's servants were clapt up? In England it's a clear breach, by the præliminary demands of the Speaker of the House of Commons, to arreist ather themselves, their servants, or goods.

* No. 614, 4 *Maij* 1686.—At Privy Counsell, the Earle of Dumfermeling and the Lord Duffus are admitted, on the King's letter, Privy Counsellers; and Maitland's patent to be Generall of the Mint, is red and past, without oblidging him to take the Test.

* No. 615, 6 *Maij* 1686.—This is the 2^d dyet of Parliament: The report of the Committee anent Pittarro and Halgreen being made, the Parliament remits them back to the Shire, for a new election. Then the draught of the Parliament's answer to the King's letter was red tuice, and by paragraphs: And that part which mentioned the present King and his brother's innate clemency was amended, and extended also to their progenitors, else it might have borne a tacite reflection and exclusion of them, as if the wholle race and stem had not been so. The great debate arose upon the appellation of *Roman Catholicks* which the letter gave the Papists. It was urged, that it was not fit for a Protestant Parliament to give them this title, [which] they assumed to themselves as their due; that Bellarmine, in the beginning of his books *De Ecclesia*, proved they were the true Church, because their very ennemies and Hæreticks, gave them the Designation of *Catholique*, which he makes the 1st note of the true Church; that Roman-Catholick was *contradictio in adjecto*, being a particular universall; that the common stile they gave us was Hæreticks. I represented, that ther was no man within the House more desirous to have thesse odious marks of division buried, and that we might be all united in the general name of Christian; it was true, the names under which they ware knowen in our law, ware the designations of the Papistical Kirk, hæresie, error, superstition, Popish idolatry, and maintainers of the cruell decrees of the Counsell of Trent: (See the Confession of Faith in 1567, article 23 *in fine*, A& 5^t in 1567, A& 47^t,

1572, and many others,) and tho' it was not futeable to the wifdome and gravity of the Parliament to give them a title implying as if they were the true Church, and we but a Sect; yet I wished some foft appellation with the leift offence might be fallen on; and therfor I propofed it might run, "Thofse commonly called Roman Catholiques." And I added fomewhat more to this purpofe; and the moft part of all our Divines calls us the Catholicks; and fo Chamier begins his *Panstratia, vertuntur controversiæ Catholicos inter et Papistas*. The Chancellor called this a nick-naming of the King; and propofed it might run in generall terms thus: As to thofse fubjects your Majesty hes recommended. The Archbifhop of Glasgows overture was, That we might call them Roman Catholicks, not as acknowledging them to be fuch, but only as a bare repetition of the King's words: So it went to the vote, and by the plurality of 37 votes, it carried that thesse words should stand in the answer. But tho' it was urged in Halgreen's election, that the electors should be fyned, conforme to the Act of Parliament, for electing without taking the Test; and that it should be marked, that the calling them Roman Catholiques was only as using the King's words, by way of complement and civility to him; yet none of thir two were marked in the books of Parliament, for any thing I can hear. It was also urged, that some words of the letter feimed to give his Majesty hopes and affurance of some concessions and favor, [which] the Parliament would show to the Papists, viz., as far as ther consciences would allow, not doubting, &c. Which naturally imported some lenth; wheras ther ware fundry Members of Parliament that thought themselves oblidge, in duety and ingenuity, to declare, that they had fully examined the case, and found they could goe no lenth at all. The Parliament's Answer was fo litle fatiffactory at Court, that tho' thesse Answers used ever to be printed before, yet they would not suffer this to be made publi&.

11 Maij 1686.—Third dyet of Parliament. There was past, 1^o The * No. 616,
 Act anent ingathering of the King's Cesse and Annuity, prorogating the p. 261.
 præscription to Martinmasse 1686, and bearing annual rent 6 moneths

after it is due ; and Quartering is added, as an Interruption as weell as denuntiations, which was only before by the A& of Convention in 1678, tho' ther is no vestige in write for Quartering ; and the Interruption, if not renewed, should have been declared to expire after a tyme, else it will now last 40 years. 2^{do}. The A& passēs for subscribing Interlocutors. See our A& in the Englishes tyme, in 1656, for this. Ther should have been ane certification against the Clerks of their deprivation, in case of their extracting A&ts or Decreits without this. 3^{tio}. The A& for subscribing executions is continued, and left open till the nixt day.

N.B.—The Clerk-Register, in his printed A&ts of this Parliament, has made many of thir A&ts of posterior dates to the dayes on which they ware truly done ; becaufe, I think, they ware not touched by the Scepter till afterwards.

* No. 617, 14 *Maij* 1686.—Fourth dyet of Parliament. The A& for restoring the Summer Sessìon is brought in : Ther being printed reasons published by the Toune of Edinburgh, why it should be restored, Doctor Bruce Bifchop of Dunkeld, reads a part of them in plain Parliament, wher old constitutions are, for their salubrity, compared to old-lived men, and not rashly to be altered. This the Chancelor storned at, as if it had been done with a designe to apply the passage to our Pænall Laws against Popery. Duke Hamilton proposēs, the Winter Sessìon may begin at the 15^t of November ; Prefident Lockhart is, that it fit doune on the 1st of Januar. The 1st vote was, Whither Alter the present constitution of the Sessìon or no ? and Alter carrieng it ; then, 2^{do}. it was voted, Whither Approve of the A& restoring the Summer Sessìon, or remit it back to the Articles ? And Approve in the affirmative carried it. But ane exception of the Zuille Vacance being forgot heir, see ane A& for it *infra*. 2^{do}. They passed the A&, that all executions (except of Baron Courts) be subscribed before, and by witneffes. This will be difficult in the Hylands, or other country places, to get witneffes who can write ; especially, it will be expensive to bring them from a distance for small summes of 50 lb. Scots, or the like : Therfor some ware for limiting the A& to summes above that. It's designe is to prevent falsē

citations. 3^{tho}. The A&t, that Inhibitions served before Recognitions are incurred shall not be cut of nor prejudged theirby, is red and left open. The King's Advocat (who was not yet turned out) objected, that it would prejudice the King's casualities, for every one would inhibit. It was reported, that Generall Drumond was to command such Members of Parliament as ware Officers of the Army, and against the Court faction, such as Mar, Roffe, Mr. Leviston, Gofford, &c., to their charges; but he would not have commanded Balcarhouse away.

17 *Maij* 1686.—At Privy Counsell, the King's letters are red, laying * No. 618, aside the King's Advocat, putting Pitmidden from the Session, putting p. 261. the Earle of Glencairne and Sir William Bruce off the Privy Counsell, and taking away the pension the King had given to Glencairne, and to the Bishop of Dunkeld. Thir warning shots ware to terrify and divert other Members of Parliament from their opposition.

18 *Maij* 1686.—Fifth dyet of Parliament. Halgreen returns without * No. 619, any question, as elected for the Meirns, and so is received. This being p. 262. the 1st day that the Lord Cathcart had appeared in Parliament, he takes the oaths, and sits doune in his place. 1^o. Cefnock is dissolved from the Croun, in favors of Melfort. 2^{do}. Ochiltry is dissolved in favors of William Cochrane. I named the unconfirmed vassalls, that they might be salved, being innocent, and the donator the rebell's son. The Chancellor in taunt said, I might writ to the King of it. Thir 2 A&ts ware presently touched; but none of the former as yet.

21 *Maij* 1686.—Sixth dyet of Parliament. Five A&ts are passed, 1^o * No. 620, Anent the Zuile Vacance, whair the Chancelor enlarges them to 20 p. 262. dayes, to get in Epiphany, and all the other festivalls, tho' their holy dayes after Christmas cease on the 7^t of Januar, and they ware abundantly cleared before. 2^{do}. Ane A&t anent Irish horse. 3^{tho}. Anent hy-wayes and bridges. 4^{tho}. Anent defenders having the benefit of the pershuar's A&t. 5^{tho}. Anent hayning even open grounds in winter; which Bargeny alledged would be the perpetuall seed of a plea among conten-

tious tennents. The A& anent Peterhead-bridge is delayed till the nixt day. Sir William Bruce's Shireffship of Kinross is attempted to be quarrelled, at leist the additions he got in to it by the [45th] A& of the last Parliament in 1685. The Earle of Newbrugh caufes cite Sir Patrick Threipland, for reducing a comprising he had upon his estate. Lauderdale intends to cite the Dutcheffe anent hir rights of Leidington, &c.

* No. 621,
p. 262.

26 *Maij* 1686.—Seventh dyet of Parliament. The Lord Newark comes over to the Parliament, and is admitted; he was brought by Balcarras to fortify the Court party: but Eglinton trained him so that he declared against it, so they wished they had let him stay at home. 1^o Earleston dissolved in favors of Ogilthorp. 2^{do}. Ane A&, that the annexation shall not prejudice subject-superiors of their casualities, nor presentation of vassalls. 3^{tio}. The A& securing Inhibitions against Recognitions passes; 4^{to}. The A& for clenging the streits of the Toune of Edinburgh, and purging them of beggars, was voted, whither the care and inspection of it should be committed to the Session or Privy Counsell? Duke Hamilton appeared for the last, and the President for the first; and being voted, it was reported by the Clarks, that it was carried in favors of the Privy Counsell; which Broomhall and some others contested, not for the value of this point, but to lay a preparative, and accordingly got it voted over again; and then the votes being æquall, the Chancellor made use of his casting vote, and decided in favors of the Session against the Privy Counsell. Some thought as the Protestants gained much in introducing the practise of twyce voting, leist they might be trepaned by wrong gathering and marking the votes; yet they lost as much by suffering the Chancellor to vote; which was a greater homologation of his right of fitting there, being ane avowed Papist, then all his acts of prefiding ware before. There was ane A& designed, and brought in to the Articles, that infestments of annuel-rent, falling in non-entry, should not forfault the yearly annuel-rent, *et valere seipsum*, but should only before declarator be the retoured few-bleuch, or taxed maill, as in property; which, tho' very rationall, yet was crushed by Duke Hamilton, as prejudiciall to superiors. 5^{to}. The imposition for Peterhead-bridge on

Eithan water, neir Frazerbrugh, was past without voting. Ane A& discharging the importation of any forrain bend Irish leather, &c., above 22 lb. weight, &c., was laid over till the nixt day, because our Cordiners opposed it; alledging, they ware not able to serve the leidges without importation, our native hydes not being of sufficient thicknes for many uses.

ANENT THE ACT FOR TOLERATION OF POPERIE.

As for the main A& designed in this Parliament, anent the private Toleration of Popery, ther ware many meitings about it. Duke Hamilton proposed, it might be a generall indulgence to Presbyterians and all; this afrighted the Bischop of St. Andrews. Sir George Lockhart President moved, That it should not belong to any converts after the A&. 2^{da}. That if they presumed to assume the publi& exercise, they should *ipso facto* forfeit the private. (Yet some madman might be hounded out to make them lose it.) 3^{tho}. That the Papists should be debarred from all publi& employments and offices, under the payne of treason, and that to be irremissible even by the King, except with the consent of Parliament. 4^{tho}. That by a declaration in write all persons in publi& trust should oune, assert, and acknowledge the justnes and lawfulness of this Toleration.

Many things concurred at this tyme to awaken men's spirits, and to heighten their expectations on both sides. Strauchan's sermon to the Synod, *supra*, in favors of moderation, allarumed many. Ther ware papers on both sides, some giving reasons why ane ease should be granted to the Papists; others giving reasons why our Pænall Laws against Poperie should not be taken away, nor weakned at this tyme. Alexander Milne of Lithgow, (on whom they had laid much streffe for making the Burrows,) deserts, and declares openly against Popery. Dr. Sibbald, from ane inward remorse, and trouble of conscience, (being new come from London,) calls for the Bischop of Dunkeld, and declares he can find no safety nor security of salvation in the Popish religion, and desires to be readmitted again to the Protestant Church; and offers to make a publi& recantation: But the Bischop of Edinburgh refused it as unseasonable;

tho' others called it a very seasonable act and dispensation of Divine Providence, for strengthening staggering Protestants. Then Ramsay Bishop of Ross preaches a sermon in the Hy-Church to the Members of Parliament, which scandalized the Papists extremely; whereon the Chancellor causes pannel him before the Bishops of St. Andrews and Edinburgh, for defaming him and his brother Melfort, by saying to Murray the Commissioner, that they had put this bone in his foot of being Commissioner, to out him of his Secretarie's place; and that they designed him no kindness by this advancement; and that he was not concerned to promote their selfe-ends. This left a great touch on the Commissioner, to reveall a secret; tho' others palliated it, that he did it of purpose to let them see he was on his guard. Ross stood on his defence, that by the Canons he behooved to be synodically tryed; but they not being able to prove it on him, it was let fall.

There were also at this tyme published sundry pamphlets to strengthen the Popish faction; as the Philosophick Theses of one Mr. Thomas Burnet, Regent in the Marishall Colledge of Aberdeen, dedicat to the Duke of Gordon; wheirin he asserts the King may abrogat and annull laws, and the 3 Estates cannot question his pleasure: *Item*, D. Cartwright Dean of Rippon's Sermon, that the King could dispense with laws in cases of necessity, and wheirof he was the sole judge: *Item*, A Persuasive to Moderation, by Pen the Quaker, as was believed: *Item*, Reflections on the Bulls of Pope Paul the 3^d and Pious the 5^t, against King Henry the 8^t, and Queen Elisabeth of England, mitigating the case of these Papal excommunications, and proving the Popish loyalty; against Barlow Bishop of Lincolne his *Brutum Fulmen*, wheirin he discovers the villany of their King-deposing doctrine, and why they ought not to be called Roman Catholicks: *Item*, A silly pamphlet called, A Net for catching the Fishers of Men, by a Cadet of Dumbarton's Regiment: *Item*, Sundry Catechisms, with the Bishop of Meaux's Pastorall Letter to those Protestants in his diocese who had changed, wher he impudently avers, that they had suffered violence nather in their persons nor goods: *Item*, A pasquill called Popery Anatomized, proving the Church of England could not charge

idolatry on the Romanists, without impeaching themselves as guilty of the same cryme: Thorndyke, of all the English divines, only maintains this.

Some who ware for pleasing the Court, and giving them something, proposed, That any Papist who should take the benefit of the Toleration, should first abjure the Pope's power of deposing Kings, and take the Oath of Alledgeance, at leist making the King Supream within his own dominions, and that they should declare, they ware not oblidge by the principles of their religion to persecute and extirpate us as Hereticks; and that this Indulgence should only last during the King's life, or a few moneths after; that if they cannot comply, they may retire and goe abroad: For they apprehended, that a Protestant successor would refresh all; and if this Parliament would be obstinat, yet it might be granted by another, if the King should assume the nomination of all the Provests of Scotland, (for the Burrows ware the brazen wall the Papists found hardest:) And leist they should choise another to be their Commissioner and Parliament Member, beside ther Provest, which they might doe, then for prevention of that, he might name the wholle Towne-Counsell; and so it could not misse.

28 *Maij* 1686.—The eighth dyet of Parliament. Lauderdale seiks, at * No. 622, the Articles, a warrant to cite the Dutchesse, for reducing the rights shee p. 264. got from hir Lord. The President opposes it, and craves it may be left to the Session; wheron it is refused. *Quæritur*, If the 218^t A& in 1594 will hinder him to table it in plain Parliament?

Some Commissioners of Supply, for the Shires of Dumbarton, Caithness, &c., are added to the former, but the Parliament required that they should be Heritors.

Torwoodley is dissolved in favors of Generall Drummond; but it was said to be for the Chancellor's behooff. Kennedy of Grange's lands are dissolved, from the A& of Annexation to the Croune, in favors of Sir Thomas Kennedy Provest of Edinburgh, tho' my Lord Oxenford was at the expence of forfaulting him, and had a promise of the gift. Thir dissolutions may be easily reduced, being without ane adequat

onerous cause; and contrare to the expresse quality and condition of the Act of Annexation: But Melfort's, proceeding on ane excambion, is more onerous.

* No. 623, *Eodem die*.—At Secret Counsell, ther is a letter from the King, that
p. 264. Sir George Lockhart President officiat as Advocat in this Parliament, that the Royall Prerogative suffer no diminution.

At Exchequer, the contracts of excambion betuen the King and Melfort, anent Cefnock's estate, with Argile's lands, and the signator to Melfort on the King's gift are past.

Item, A remission for life to one Campbell.

Item, The Bischop of Edinburgh seiks to passe William Hay Clark his gift of escheat. Alledged, 1^o The office falls not, whatever may come of the emoluments: If a Bischop ware denounced to the horne, or ane Advocat, the donator could not pretend to enter Bischop or Advocat. 2^{do} They offered the debt of the horning. Duke Hamilton was violent against the Bischop. It was committed to some of their number to settle and agree them.

* No. 624, 2 *Junij* 1686.—Ninth dyet of Parliament. The lands Melfort had
p. 264. given the King in excambion are annexed to the Croun: Lauderdale and the Laird of Lamont complain that some of their lands are comprehended; but they ware not noticed.

* No. 625, 3 *Junij* 1686.—At Privy Counsell, a letter from the King is red,
p. 264. depriving Robert Bruce Bischop of Dunkeld from his Bischopruck, without giving him any reason, (save it was nottor, that it was for his opposing the establishment of Poperie,) albeit his gift was *ad vitam aut culpam*. Some asked, If the spirituall supremacy given the King by the 1st A& of Parliament in 1669, (impowering him to dispose on ecclesiastick persons,) was not to a King *qua* Protestant, for a Papist repudiats that supremacy, and will not have the title of Head of the Church? P. Voet in his *Jurisprudencia Sacra*, denies this power to Princes.

2^{do}. Ther are 2 letters against John Wedderburne of Goffoord, one putting him off the Privy Counsell; the other taking away his place as Lieutenant-Collonell to the Dragouns.

4 *Junij* 1686.—The Tenth dyet of Parliament. Ane A& was brought * No. 626, p. 265. in anent Weights and Measures, and discharging the taking the peck to the boll, under the penalty of confiscation of all their moveables.—This was objected against as too great; escheit being one of the greatest certifications in our law; and the 17th A& in 1621 makes it only the forfaitor of 40 shillings on each boll; and ther should be a commensuration betueen the penalty and the deli& which the Chancellor wished we would apply to the Pænall Laws against Papists. This A& was continued.

Monfieur Colbert, Marquis de Saignelay's birth-brieff is past; his father had formerly fought it, but was disoblidged by Lauderdale.

Sundry fairs, mercats, and ratifications are past; and particularly one of Melfort's signator, tho' it be not usuall to ratify signators.

8 *Junij* 1686.—This is the Eleventh Parliament fitting day; 1^o. Ther * No. 627, p. 265. is ane A& in favors of Duke Hamilton, excepting the Ile of Arran from the annexation made in the Parliament 1685, of all Argile's jurisdictions over the Iles. 2^{do}. Ane A& was brought in anent the Excise, that 2 Commissioners should be a quorum, to judge betuen the Brewars and Tacksmen; that Heritors shall have no power to hinder any to brew within their bounds, (tho' their charters bear *cum brasinis et brueriis*;) and that Burgeses brewing for the use of their oune families, who pay no land-cesse, shall pay Excise, to make up the King's quota. This was thought but a bad politique, to disoblidge the Burrows: So the Barons ouned them, 1^o. To keep them firme in greater matters. 2^{do}. Leift this should lay a preparative to cause the Barons pay Excise for their oune brewings nixt; so the Court faction lost this A& by 52 votes, which was ane essay what they might expect if the other A& for Toleration of Poperie were brought in.—They called this negative vote, a flieng in the face of authority. 3^{do}. The A& of Mets is brought in again, with

200 lb. of penalty ; and 15 stone to be the weight of a boll. This is also lost by 4 votes ; and on a scruple is twice voted. 4^{to}. Ther is a dissolution of Jerefwod's lands in favors of the Duke of Gordon, he is superior of Mellerstains. 5^{to}. A dissolution to Tarras of his personall estate, and of 2000 mks. by year of his lands. It's narrative is, for his discovering the plot ; so it may be doubted how far this may enervate his confession as emitted *spe præmii*. Duke Hamilton fought against it zealously, for Tarras had loaded him ; but the Duke having left the country [party,] he saw his oune impotency in the want of a backing to second him. 6^{to}. The A&t for burieng in linnen, and regulating dead-coffins is past.

Ther ware fundry A&ts proposed by the Lords of Session to be past in Parliament, and particularly one, that in A&ts and Decrees the summonds be shortly narrated, and nothing more be insert but the debate and interlocutors, without any bills. But in the case of ane alledgeance in a suspension, that it was proponed and repelled, the party will be forced to extract the bills, &c., which will be the same expence, and more trouble to the subjects.

* No. 628,
p. 265.

11 Junij 1686.—Twelst dyet of Parliament. 1^o. Are past, the A&t anent writing seafines in books. 2^{do}. The case betuen Sir John Whytford of Milneton, and Sir Daniell Carmichell, anent regiftrat seafines not booked. 3^{to}. The A&t anent the publication of the depositions of witnesses. Mr. John Adair gives in a bill, craving some allowance for his Geographick Maps.

Sir David Carnaigie of Pittarro insisting against Lauderdale, for reducing that decret of Parliament anent the estate of Craig ; Lauderdale alledged, he most be of new cited, both he and his authors. Answered, They ware cited the last Session of Parliament ; and [that] all parties having intrest are not cited, is a dilator [defence] not used in Parliament.

Sir William Bruce and Cromartie's Shireffship are both quarrelled at the Articles ; as also a new Commission of Teynds is brought in ther, to make new Members, and to put of Queansberrie's ones. The merchants also present ane Manufactory A&t to reschind that A&t made in 1681, none having benefit by it but unfree traders.

14 *Junij* 1686, *ante meridiem*.—Thirteenth dyet of Parliament. Thir * No. 629, p. 266.
 Acts past; 1^o A new Commission for regulation of Judicatories. 2^{do} A new Commission for Plantation of Kirks.—The Test was urged to be inserted in both; the last Act was only carried *affirmative* by one vote; a new vote craved, but not granted. 3^{tio} Coltnes is dissolved in favors of the Earle of Arran. 4^{to} That clause of the 16^t Act, in 1685, allowing Justices of the Peace to choise their oun Clark, is rescinded in favors of the Secretaries. 5^{to} John Adair gets an imposition of 12 pennies on each tun of every ship, and a recommendation to the gentry, for his Geographick and Hydrographical Maps. 6^{to} A remit of the Manufactory cloath Act made in 1681, to the Privy Counsell. 7^o Duke Hamilton causes bring in an Act for reducing the annuel-rents of money from 6 to 5 per cent., which seemed to impinge on the publick faith given by the [49th] Act in 1661, that they should never be lowered, that *usura semissa* was *legittima et modica*. Ther ware 2 exceptions in the Act, 1^o That debtors should lose the benefit of the Act, if they suffered 2 termes to run in the 3^d unpaid. 2^{do} If he took a protection, tho' he never made use of it. Sir George Lockhart Prefident urged, that thir exceptions would prove a snare, and foundations for pershuits of usury; for, when a creditor ware conveyed for taking 6 per cent., and he alledged that his debtor had incurred the forfaitor by letting 2 termes run, &c., he should succumb for lack of probation, the discharge being in the debtor's oun hands. It being put to the vote, was carried *negative*, by the votes of the Barons and Burrows, who, in most things in this Parliament, adhæred *mordicus* one to the other.

Eodem die, post meridiem.—Fourteenth dyet of Parliament. At the * No. 630, p. 266.
 Articles, Pittarro is pressing for a hearing in his affair against Lauderdale; the Earle of Murray Commissioner, in favors of Maitland, interposes his negative, and delays it this Session of Parliament: this being the first time he had used his negative; Southesk took it so ill that he protested for coast, skaith, and dammage; which was ane hardy bold act, had it been against a hy-mettalled man.

At Parliament, the A& anent the Mint is past, with many amendments from the Earle of Aberdeen; who judged himselfe concerned in honor to shew the mal-administration of that office, to vindicat his decret, and wheron his donative of 8000 lb. sterling flowed; and it's ordained to be scrolled *in mundo*. We sate from 5 till 10 at night.

* No. 631,
p. 266.

15 *Junij* 1686.—The Fifteenth and last dyet of this Seffion of Parliament. Thir . . . A&ts came in, 1^o Ane A& anent the Commiffion of the Hylands, that thoffe shires near it might pay 10 shillings Scots on the 100 lb. rent, for a salary to the watch against the theiffs and robbers; much desired by Earle Breadalbane; [but] carried in the negative. 2^{do} Ther is an A& past rescinding the Clark-Register's calling in the Records each ten years, by the 33^d A& in 1685. 3^{tio} Ane A& rescinding the Commiffion given in 1685, for dividing Argile's Estate. 4^{to} Ane A& rescinding that addresse made in Parliament 1685, against restoring Argile's children. All this was in pique and reflection against the Duke of Queanberry and Tarbet. 5^{to} Ane A& about the measure of bark. 6^{to} Ane A& to John Meikle for founding bells and canons, making it a manufactory. 7^o Ane A& to Mr. J. [Walter] Birny, the blind Minister, for 400 mks. yearly, out of the vacant stipends due to the Colledge of Glasgou. This was called ane invading and encroatching on the Colledge's property. The Bischop of Edinburgh calling it a charitable work, Eglinton and Dumfreis said, the Reverend Clergie talked much of charity, but practised litle out of their oun pockets. Severall new Commiffioners of Supply ware added; but the Chancelor did not adventure to bring in the A& which they had prepared, for exeiming Commiffioners of the Supply from the taking the Test, contrare to the 12^t A& in 1685; for tho' they ware a litle imboldened by carrieng the Commiffion of the Church without expresse mention of their taking the Test, (tho' that is imported and carried by the former A&ts requiring all in that capacity to take the Test,) yet they found, on poling and numbring the votes, that they would lose it.

Ther ware also fundry fairs granted, and impositions for bridges and harbories, (which being taxes should be voted.) One of them was to

Cunyghame of Auchinharvy, and the Earle of Eglinton, who used the other's name, himselfe not being gracious. *Item*, Sundry ratifications; but ther was one laid aside, viz., the Toune of Edinburgh's ratification of their new gift of 2 pennies on the pint of ale; because Reidfurd, Commiffioner for Mid-Louthian, mainly concerned in it, objected, that it was not yet revised in Exchequer; Forret also, as a Lord of the Seffion, appeared against it. Sundry signators were ratified; tho' ratifications of them are not usuall, but only of charters and infestments.

Item, The Maiffers, on their petition, got ane Act allowing them to exact 6 shillings sterling for every ratification and fair, as they ware in use formerly. The Earle of Braidalban got 6 fairs. Only the Chancellor objected, that one of them was within a few dayes of one of his, and so *in æmulationem*. M'Intosh got 7 fairs; which are but occasions for the country peeple to debauch. Sir George Gordon of Edenglassie having a Brugh of Barony, was feiking to have some Parishes adjoyned therto, as to the matter of poinding and apprising of moveables, because they lay remote from Bamf, the head-Brugh of the Shire; but the Commiffioner Burges for Bamf opposed it.

The Bischop of Edinburgh was feiking a ratification of a gift he had got from the King, making him Chancellor of the Colledge of Edinburgh; (*de quo supra*,) but finding difficulty, he forboor.

Then past the Act *Salvo jure*, and the Act of Adjournement to the 17th of August. And, to close all, we got my Lord Commiffioner's speach, shewing, That the King had called them for no earand of his oune, but to give them occasion to make what good laws they pleased; he desired the Members of Parliament to goe home, and not to spread fears and jealousies in the minds of the peeple, because the King was of a different religion from the generality of his subjects, feing he would touch none in their liberties, save wher he was provoked by the insolence of ill men. This day being the last, the full Rolls were called, to see who ware absent.

The Indemnity offered by the King, and his Commiffioner in his speach, (which one maliciously, because of its many exceptions, called a circumcised Indemnity,) was not granted in Parliament, because they

did not comply with the King's demands: nather ware the offers made to the Burrows, to repone them against the Brughs of Baronies and Regalities, the fifty sous per tun in France, and their free-trade with England, set about; because they ware obstinat against the Court party, and so could justly expect no favors; they never being so unanimous in any Parliament as in this, formerly they depending on Noblemen, who trailled them, &c.; therfor some called this ane Independent Parliament.

Many thinks, if they had brought in the A&t of Toleration of Popery in the very begining of Parliament, it's more probable it might have past, the Protestants then nather being so allarumed, united, nor fortified with arguments and courage as they grew afterwards. In the narrative of the draught of that intended A&t of Toleration of Popery, some complained of the word *sanguinary* as odious, and not a terme of our law. 2^{do}. That the Estates should presume to say, thesse laws ware not execute by their predecessors; seing the executive power is not in them but in the King. 3^{uo}. In affirming (without the King) that they ware resolved to adhære to the Protestant Religion; the three Estates, without the King, not being *nomen juris*, and having no power; and so it looked like the stile of the late rebellious Parliament, but the point was, the King would not concurre with them in that resolve; nixt, it's *protestatio contraria facto*. It's remarkable, that the draught of the A&t says, thosse that are of the Roman Religion shall have liberty, which is *præsentis temporis*; *ergo* in propriety of grammar-construction, thosse who turne Papists after the A&t are not included.

The methods of solistation to obtain consent to this A&t ware very strange and extraordinary. 1^o. The laying aside of men from their places, who could have no interest but the serving their consciences. 2^{do}. The commanding Mar, Rosse, Kilfyth, Sir John Dalzeell, &c., to their charges: But they offered to give up their Commissions. 3^{uo}. The ordering Orbiston, &c., to goe to the Hyland Commission of Justiciary, but he refused; the King's write to attend the Parliament being more necessar. 4^{to}. The staging the Bischop of Rosse. 5^{to}. The imprisoning my two servants; I being a Member of Parliament. 6^{to}. The offering

to remove Mr. John Dempster, Sir Patrick Murray, Broomhall, &c., as not actuall Burgeffes, and so incapable; and yet they had been allowed to sit and vote. 7^o The bringing in of new Members, as Newark, &c., tho' he turned against them. 8^o The importunities used by Sir William Paterfon, Mr. Thomas Gordon, Bailzie Aidy in Aberdeen, in concussing Members of Parliament. 9^o The printing and spreading of fundry papers at this tyme, (*de quo supra pag. 263;*) as Burnet's Thefes, the Persuasive to Moderation, Cartwright's Sermon, the Reflections on the Bulls, &c., the Papist Represented and Misrepresented, stolen from a French book I have seen. *Item*, Their dealling with Members not clear, to stay away or goe home; as with Brollas, Tutor of M'Lean, &c. And then prolonging the meeting to weary out the poorer sort, who had exhausted both their money and credit. *Item*, The letters ware one post all broken up and searched, to see if any correspondence or intelligence could be discovered betuen Scotland and England, they knowing so perfittly weill all that passed here. The Harleem Gazet from Holland boor also a good account of what past in our Scots Parliament. Then, it was reported as if his Majesty had been once resolved to have come doune himselfe by a surprize, on 2 or 3 dayes posting, and have past and managed it in his oune presence.

Sundry providences concurred also, at this tyme, against this project of Toleration to defait it; as Doctor Sibbald's turning Protestant; the Lord Doun, the Commissioner's sone, turning Papist; Alexander Milne's deserting that syde; and God's raising up men to appear for the Protestant interest, who ware not very strict in any religion: And the boasting of some, and turning out of others, contributed rather to harden then to fright; together with Ramfay Bisshop of Ross's Sermon, and his usage, &c.; and their hindring the other Bisshops to preach, and particularly Douglas of Dumblain, because he would not give assurance to forbear the preaching against Popery, nor shew his papers. The Earle of Callander, and Sir John Maitland, by the old politick, differed from their fathers Lithgow and Lauderdale, who stood for the Popish syde. The Commissioner, in his returne from Dunybirsel, after his dinner at Barnton, he knighted James Caddell of Muirton, and he was his only

Knight, except Mr. Robert Colt his Advocat, whom he knighted that night the Parliament rose, when his power is expiring *in agone mortis*. He procured Hew Paterfon of Bannockburn a patent to be Knight-Baronet, and refused to knight Mr. Thomas Gordon. One said of our Pænall Laws, that *multa fieri non debent, quæ facta tamen valent*, being now made, they should not be rescinded at such a tyme as this. It was wondered how the Chancelor and Secretary came to imploy him in so criticall ane affair; but they had promised themselves no opposition; and the Papists had a good omen in it, that, as one Earle of Murray made the first Pænall Laws against them in 1567, (but they were first made in 1560,) so another Earle of Murray, his great-grandchild, should take them away; but this præfage failed them for this tyme. The Croune and other honors ware immediatly, that same afternoon on the 15^t of June, on the rising of the Parliament, lodged in the Castle; and the Commiffioner departed for London, at 4 a'clock that afternoon; and the Chancelor followed him a few dayes after; and each of them blamed another for the miscarriage of ther Toleration A&t. But much blame was cast on Tarbet in this A&t of religion, for he had posselt his Majesty with ane opinion of its attaineablenes, and shoven him the Rolls of the Members of Parliament, and pricked doune who he thought would be for it, and who against it. He did cast much of the blame on the two Bischops, and they devolved it on Tuedale and him; however, he took in Parliament a ratification to himselfe and his sone of the Barony of Tarbet, with ane erection into a Regality: Which Duke Hamilton opposed; but Tarbet showed, the Duke's oun Regality of Kinneill had more unusuall clausfes.

Before the 17^t of August, to which the Parliament was adjurned, it was again prorogat to the 21st of October; and a litle before it, by proclamation, it was dissolved: For, by a new one, the Popish party hoped to get the Burrows more rightly constitut, by assuming to the King the nomination of the Magistrats; yet the other party bragged, that thesse Commiffioners of Shires who had appeared for Popery would not be choisen again; and particularly, some complained of electing Lords of the Session for Members of Parliament, who com-

plyed with the Court becaufe of their dependence, wherof ther was nine in this Parliament, viz., the Clerk-Regifter, (but he was abfent except a day or two, tho' they pretended his ficknes was but fimulate,) the Juftice-Clerk, (but thir two fate not as Commiffioners, but as Officers of State;) the Prefident, Reidfurd, Forret, Balcaſky, Drumcairne, Boyne, and Pitmedden; which laſt, as Athanaſius, only oppoſed the Court. But for obviating this, it's like his Majeſty, on a new election, will not only recommend the excluſion of difaffected perſons in Shires, but infinuat whom he would have repreſent them. One ſaid of this Parliament, what the Irifh Teg ſaid of the Earle of Feverſhame, when the King was making him a Knight of the Garter for his defeating Monmouth, "That God only deſerved the Garter;" ſo the finger of God was much ſeen in the ſtedfaſtnes of this Parliament, who had not one great man in publiſt place to ounne them; and it behooved to be from ſome hyer principle, that Noblemen, Gentlemen, Biſchops, and others, cheerfully laid doune their places, rather then violat their conſciences.

Mr. Robert Innes Wryter to the Signet, is put of from being Lyon-Clerk, becaufe of his not-compliance. We ſhall ſee preſently *infra* Hamilton of Orbifton, and Johnſton Proveſt of Glaſgow, imprifoned on the ſame account, tho' other pretences ware made uſe of. It was moved by ſome, That if the Toleration paſt, that a Declaration ſhould be required, not only of thoſe in publiſt truſt, but of all perſons, approving the lawfulnes therof, that none might eſcape but all be equally guilty.

Some Papiſts complained, that Sir William Paterſon, Mr. Thomas Gordon, Bailzy Ady, their indiscreit meddling with Members of Parliament to influence them, did wrong their cauſe and intreſt. This excuſe was made for Duke Hamilton, and the Prefident's going alongs; that by ſtaying in that party and giving them moderat counſells, they could doe the Proteſtant Religion better ſervice then to caſt themſelves out of employment, by refuſing all conceſſions whatſoever. Yet others ſay from Paull, "We moſt not doe ill, that good may come therof;" and, by their complying, they ſcandalize and ruine many weak ones; their example is infeſtious.

Professour Strauchan's Sermon about Moderation allarumed the Ministers, and made many of them more firme and zealous.

Yet when the Parliament is now up *re infecta*, it is said that the Bishop of Edinburgh, Lord Sinclar, Boyne, and many others who appeared for the Toleration, boast, that if the A& had come in, they would have been against it; which is a tacit acknowledgement that they blush to own avowedly what they did. Yet when a King by his letter to a Parliament desires a thing, it is æquivalent to a command; *est rogare ducum species violenta jubendi*: But it's a great misfortune wher subjects are necessitate to differ from their Prince; and they are to refuse him with all the discretion, humility, sorrow, and regrate imaginable. (See the Wholle Duety of Man, Partition and Sunday, 14. *Item*, Baxter, and the Account of a Spirituall Life, cited to this purpose *alibi*.) One maliciously said, That the Bishop of Edinburgh resembled Steven Gardner Bishop of Winchester, in Quean Mary of England's reigne, for craft and suttlety; (but let a man once desert principles, it's easie to be witty, dissembling, and false;) and they compared our Archbishop of St. Andrews to Bonner then Bishop of London, who was headstrong, temporizing, and cruall; but, in some lucid intervalls, he begins to think he hes been too much led and imposed on.

The new-converted Papists stirring at this tyme for a Toleration, (the old ones ware not so forward till forced,) hes had this good effect, to cause the ignorant Protestants (even of the Ministry) study the controversies betuixt us better: but would to God the only emulation ware, who should lead the most godly and holy life! This present King, when Duke of York, was used to say, The Scots Papists having so much privat liberty of their religion, without any punishment applyed, had no reason to complain.

The Protestant party wearieng of the lenth of this Parliament, ware said to be thinking on stratagems to blow it up: As to bring in ane A& for ratifieng all our laws against Popery: Or to stage the Bishop of Edinburgh, 1^o For saying in his last Synod, that God had set a Popish King over us for a judgement; which, if true, then we cannot pray for the continuance or long life of a judgement. 2^{do} That, in plain Parlia-

ment, in answer to my Lord Blayntire, he reviled our Confession of Faith in 1567, to which we are sworn, saying, It contained severall things Popish, and other things bordering on Phanaticisme; which was a misconstruing the laws, and alienating the hearts of the peeple from the King, and leifing-making, contrar to the 10^t A& in 1585; and many others. But the raising of the Parliament superceeded this work.

And now, to close up this PARLIAMENT, I shall adde what might have been represented against the said A& for Toleration of Poperie, beside what is above said, and is disperfed in other papers *apud me*, and shall only touch the heads; leiving the amplifications and enlargements therof to another tyme.*

15 *Junij* 1686.—As soon as the Parliament was up, the Privy Counsell * No. 632, met, and wrote a letter to the King, in favors of the Commiffioner, p. 283. shewing his care; and so he parted that same day.

16 *Junij* 1686.—Hamilton of Orbiston is imprifoned in Edinburgh Tolbuith, for alledged concealling of Sir John Cochrane's demanding supply from him for Argile, when he discovered Douchall for the same fault; (*Nota*, It was Orbiston brought Douchal to trouble;) and for refetting rebels on his lands, and corresponding with them; tho' he was a great profecutor of them. (*Vide infra* 4th of September.)

16 and 17 *Junij* 1686.—Ther is a proclamation made by the Privy * No. 633, Counsell, on a letter from the King, discharging Minifters in their p. 283. fermons, or others, to reflect on the King, his person, principles, defignes, or government; and this conforme to the 134^t A&, 1584, which was

* Sir John Lauder has here inserted an elaborate Discourse on the Penal Laws, filling thirteen pages, which, if printed, would be much more suitable for an Appendix than in this place. He entitles it, "A Discourse in Defence of the Pænal Laws against Popery; and Why the Toleration Act should not pass. Wheirof part was spoke in the Parliament, and the rest intended, but was prevented by the sudden raising of the Parliament."

made against the Presbyterians and some of the Nobility, by Captain James Stewart. See also the 10^t A& in 1584. The word *principles* was excepted against, and dashed out. The Ministers were displeased at this A&, it reflecting on them in its narrative as seditious. See more of this *infra* 16 *Septembris* 1686.

* No. 634,
p. 284.

17 *Junij* 1686.—At Privy Counsell, Lewis Nisbet is pershued by a Minister, for beating him when he was teilling his gleib. Alledged, He was encroatching on his ground, and had laid by the badge of his office, his gown, and was holding the stilt of the pleuch. It's committed to probation.

2^{do}. The Archbishop of St. Andrews complains of John Johnston Provest of Glasgou, for giving in a defaming and reflecting bill of suspension on him. (*De quo supra*.) He and Orbiston had opposed the Court.

21 *Junij* 1686.—By a letter from his Majesty, Queensberry is laid asyde from all his places and offices, as his place in the Treasurie, Privy Counsell, Session, &c., and desired not to goe out of Toune till he cleared his accounts. So he bought Lauderdale's house in the Cannogate.

2^{do}. A letter against Alexander Milne in Lithgow, recalling his being ane Assistant-receiver of the King's Customs, for the undutiful acts he procured in the Burrows, rescinding a pension of 100 lb. sterling yearly due by them to the Secretaries, &c., and for fundry other important reasons.

Eodem tempore.—A party of the King's forces is sent to apprehend old Houston of that ilk, for resetting rebels. His son (tho' Melfort's son-in-law) had not carried weill in the Parliament.

2^{do}. The Privy Counsell writes a recommendatory letter in favors of the Chancellor going to Court, more full then what they gave to Earle Murray Commissioner.

Eodem tempore.—The Earle of Dundonald is named by the King's letter to be one of his Privy Counsell, bearing a dispensation with the Test, he being a Presbyterian. This is to be for a leading preparative

to Papists to sit and enjoy public offices, by dispensation with the Test, and other Oaths.

22 Junij 1686.—At Privy Counsell, ane A& is made anent the Hy-^{* No. 635,}
wayes and Bridges relative to the A& made in this Parliament 1686. ^{p. 284.}

2^{do}. Grame of Duntroon, and Poury Fotheringhame pershue one another for a ryot; the 1st because Poury called him Villan and rascall, for reprooving him in treading doune his cornes in hunting; and the other for switching him. Admitted to probation. The next day Duntroon, (who was the bolder that he was Claverhouse's Chamberlain,) meiting Poury in the Hy Street, spits in his face, because, upon oath before the Privy Counsell, he denied the aggressiion. On this a Privy Counsell meits again, and Duntroon is imprisoned. (*Vide* 15th July 1686.)

24 Junij 1686.—The Chancelor parts from Edinburgh to London.

25 Junij 1686.—At Privy Counsell, John Johnston (*vide* this page ^{* No. 636,}
supra) is sentenced and degraded, and Barns appointed to officiat as ^{p. 284.}
Provest of Glasgou till Michelmasse; and he [was] ordained on his knees to crave the Archbisshop pardon before the Counsell, and sent to prision: yet *injuria anno et dissimulatione tollitur*, and it was more then a year heir; but this was *injuria scripta*.

Eodem tempore.—A poor woman stealls some money and cloaths, from one Dobson hir mistress, and endeavoring to escape in a ship at Prestonpans, is apprehended and incarcerat in Edinburgh Tolbuith, wher for shame shee hangs herselfe.

Principio Julij 1686.—Ther is a particular Convention of the Royall ^{* No. 637,}
Burrows held at Edinburgh, wher 1^o. They restore Melfort's pension. ^{p. 284.}
2^{do}. They take to confideration, Sir James Kennedy Conservator his gift from the King of a ducatoon, to be payed by every passenger to the Staple-port, and so much upon the tun of all goods exported or imported; which two will be worth near 2000 lb. sterling per annum; but

it's declared in the gift, by the King's appointment, redeemable by the Burrows for 400 lb. sterling yeirly to the said Conservator. This tax was founded on the [27th] Act of Parliament in 1663, giving the King the ordering and disposall of trade; but ane toll on passengers relates not to trade. The Burrows offered him 200 lb. sterling, providing he would take himselfe to the Brughs of Regality and Barony for the other 200 lb. sterling, feing they injoyed much of the trade. Ther ware many new Members in this Convention; for the Members who had served in the Parliament being weary, had caused send others in their room. They also allowed Mr. James Elphinston, their Agent, 100 lb. sterling, for his pains, and incident charges he had been at: And gave Mr. Skein in Abirdean, the author of the printed Memoriall to them, a gratuity.

* No. 638, 15 *Julij* 1686.—At Privy Counsell, 1^o Ther is a letter from the King
p. 285. about Sir Alexander Forbes of Tolquhon, (see thir parties *supra* pag. 179,) remitting him the 10,000 mks. which was the King's part of the fyne, and desiring the Lords to reconsider thesse processees and fynes imposed on him, both for the Salmond Cruives, and for sclandring Ogilvy of Forglen, anent the Cup, as mentioned *supra* 8th April 1684, and 30th April 1685.

2^{do}. Watson of Ethernay and his sone pershues William Brugh in Kirkcaldy for defamation, in pershueing him before the Shireff of Fyffe, for keeping up 700 mks. of the summe of 9000 mks. he was owing the said Brugh, as if he had cheated and miscounted him; wheras Ethernay hes deponed, that he delivered him the wholle money. Alledged, 1^o. This being but a verball injurie done to a private party, nather a Judge nor Magistrat, the Privy Counsell use to remit such to the Comissars. 2^{do}. Ther is no infamating *sine animo injuriandi*; and wher the case is dubious, Lawyers have introduced *juramentum purgationis*, that he did not intend ane affront; l. 5^{ta} § 8^{vo}. *D. de Injuriis*, and the *Apostilla ad Bartolum* ther sayes, *Jure Canonum si incertum sit an quis dolo deliquerit, ejus juramento statuitur*. 3^{do}. *Nemini injuriam facit qui suum prosequitur*; he who seiks repetition *condictione indebiti*, reflects on the defender; he

who serves an inhibition, or pershues on the [18th] A& of Parliament, in 1621 anent bankrupts, doth tach the parties reputation, and yet ther's no action for injury competent in thesse cafes, no more heir; especially, if what he said was before Ethernies deposition denying it; but if he hath blamed him since, that ware defaming. The libell was admitted to probation. Brugh objected against one of the witnesses, called Scot, that he had come out of the prison on a *cessio bonorum*, and so was infamous *vi statuti*, and was not worth the King's unlaw. The President was for admitting him *cum nota*, and thought the objection not relevant, feing his cloaths are worth 10 lb.; but they are not his oun *nisi ex humanitate*, as long as his debt is unpaid.

3^{tho}. Mr. John Rig wryter pershues Robert Bull, late Deacon of the wrights of Edinburgh, for robbing and spulzeing his plenishing out of his house, and dispossessing his wife and children. Alledged, 1^o By the 33^d A&, Parliament 4, James 5^t, spulzies should be first civilly tryed. 2^{do}. He does not specially condescend on the particular plenishing away taken. 3^{tho}. He was landlord, (only he had passed from his tacite hypothec, by his taking a bond for the maill, and giving a discharge of it,) and he secured the plenishing at the Pershuar's wife's desire, to prevent creditors poindings: only a wife cannot give away hir husband's moveables; yet the Lords laid hold on this consent of the wife as a *probabilis causa excusandi a spolio*; but shee deponed, that shee desired him only to secure it within the house, but not to carry it away. 4^{tho}. He, within 8 dayes, offered it back again to Rig, by way of instrument. The libell was admitted to probation, and he fyned: at lenth he componed.

4^{tho}. Thomas Fotheringhame, younger of Poury, pershues David Grame of Duntroone, (*de quo supra*,) for his impudent assaulting him at the Crosse of Edinburgh, and spitting in his face during a depending proces, and so he most lose the cause, by 138^t A&, Parliament 8^t, and the 219^t A&, Parliament 14, James 6^t, and ought to be further censured. Alledged, The A&s of Parliament being only a ratification of ane A& of Sederunt of the Lords of Session, did not extend to the Privy Counsell proceses; and, 2^{do}. That it being a law extreemly pænall and rigorous, the word *invasion* most be tane in *proprio significatu*, for

beating or hurting, and not for spitting; tho' this last is more ignominious. 3^{to}. He had great provocations; and Law sayes, *qui est in calore iracundiae non est in plenitudine intellectus*. 4^{to}. He had suffered long imprisonment, which might alleviat and expiat; Lawyers making *spontanea, ingenua confessio, et diutina in carceribus detentio*, grounds of moderating the punishment. The Lords liberat him on caution to undergoe what censure they should afterward inflict on him.

5^{to}. Hoburne of Menstree pershues, &c., for wrongous imprisonment.

6^{to}. Dumbar of Baldun gives in a complaint against Major Winrahame, that he had quartered his troupe on his very meadows and inclosed ground, contrare to the priviledge given by the [284th] A&t of Parliament in 1661, to parks: Which Duke Hamilton being preses judged illegall; but he had got Baldun's grandchild espoused to one of his sones; but George Winraham told the Duke, he would take bad language from no subject.

Eodem tempore.—The Auditors of the Duke of Queensberrie's accounts as late Treasurer began, and at their first meiting they took the Test.

2^{do}. A new letter comes doune in favors of the Lord Lorne, for paying his annuity of 15,000 l^b. Scots, out of his Father's estate.

* No. 639, 20 Julij 1686.—At Privy Counsell, William Brugh (*de quo pag.*
p. 286. *præcedente*) is ordained to crave Ethernly pardon for defaming him, is sent to prison during the Counsell's pleasure, and only fyned in the witness expences.

Eodem tempore.—Ralf Dundasse's reli&t having charged the present Laird of Dundas, on ane A&t of Privy Counsell, to pay hir aliment; it was suspended on this reason, that the said aliment was only granted during their marriage, which was now dissolved by his death. Answered, The a&t implied it was settled upon hir for ane aliment during hir lifetyme, and shee had no other joynture, the freinds having denuded hir husband of the estate of Dundas, and given it to the second brother.

22 *Julij* 1686.—By A& of Privy Counsell, upon ane order from the King, our Parliament is adjourned from the 17th of August to the 21st of October. Some said, this was to see, the Michaelmasse elections in Burrows if it shall give any incouragement to dissolve this Parliament, and venture on a new one. But afterwards elections in all the Burrows is stoped.

Eodem tempore.—At Criminall Court, there are mutuall pershuits betuixt Mr. Edward Wright and Bruce of Kinnaird for ryots, oppreffions, contumelious and menacing speaches : it's continued.

Eodem tempore.—My Lord Tarbet being deprived of his new annexed Shireffship of Cromarty, he, by the Earle of Powis means, in compensation of it, gets his lands erected by the King in a Regality ; which Duke Hamilton stops at the passing, as containing unusuall claufes ; but he offers to take it as the Duke had his Regalities.

Eodem tempore.—The Duke of Queansberrie's article of 27,000 lb. of incident charges and expenses on intelligence being quarrelled by Duke Hamilton, and refused to be allowed ; it was found, this was the money given by Perth and him in 1684, to the Dutchesse of Portsmouth, to get out the Earle of Aberdeen from being Chancellor ; and that he has Perth's bond for the halfe of it, [in case] it should not be allowed. They also refuse a part of his charge, alledging he had no right to intromet with such a part of the King's revenue, and so most count for it as if it ware still in his hand, without respect to the discharge he makes. The ground of this pique of Duke Hamilton against Queansberry was his taking the Earle of Tarras's deposition against Duke Hamilton in May 1685 : (see of it *alibi*.)

26 *Julij* 1686.—The Justices of Peace for East-Louthian meet at Haddington, and divides the haill Parishes of the Shire amongs them, for visiting and repairing the hy-ways, caufayes, and bridges ; the 3 Parishes of Pentcailtland, Ormiston, and Humby, fell to Ormiston, Humby, and me.

Eodem tempore.—Sir George M'Kenzie, late Advocat, by allowance goes to Court, being incouradged by the Earle of Balcarhouse; but returns without seeing the King.

Item, Generall Douglas goes up; and the Archbifchop of Glasgaw, after he had filenced Doctor Canaries the 2^d tyme at Moffat Well, without his co-presbyters, for printing a letter præfixed to his Sermon.

* No. 640, 10 *Augusti, seu Sextilis* 1686.—Sir Hew Campbell late of Cefnock, and
p. 287. his fone, are perfhued before the Privy Counfell, for violent intruding himfelfe into the houfe of Gafton, wherto he had no right, notwithstanding of all the favors beftowed upon him by the King in fparing his life, and giving him back a part of his fortune. On his declaring he had given present obedience and removed, he was difmift, and dyed fhortly after.

2^{do}. The Lady Goodtrees is alfo perfhued, for vitious intromiffion with the rent of hir fone Coltnesse's lands, who was forfault.

3^{tio}. Mr. Wauch Miniſter at Leith, and Mr. Peter Paterfon Chamberlane to Balmerino, have a ryot, about ſome marches of a piece land the ſaid Mr. Peter had adjacent to the Parſon's gleib. *Item*, The Shireff of Edinburgh made a perambulation and viſitation betuen the ſaid Mr. Peter and Niſbet of Craigintinny, as to ſome controverted marches betuen them.

* No. 641, *Medio Auguſti* 1686.—The Vicount of Frendraught having deceaſt,
p. 287. Lieutenant Crichton his unckle, a Papift, being nixt air, gave in a bill to the Committee of the Privy Counfell, and had that favor as to obtain their order, to command all who had any of the papers of the eſtate of Frendraught to exhibit them, even to the very proceſſes lying in the Clerks of Seſſion's hands, and given in by the late Vicounts mother, and Morifon of Bogny hir huſband; tho' this was not done in *pleno confilio*, and they ware not cited; and that, (if this ſummar method ware once allowed,) then exhibitions by appearand airs *ad deliberandum*, are no more neceſſary.

Ultimo Augusti 1686.—The Chancelor, Earle of Balcarhouse, &c., arrive at Edinburgh from London.

3 *Septembris* 1686.—The Earles of Tuedale and Balcarhouse, and Prefident of the Seffion, are admitted by the King's letter as Commiffioners of the Treasury.

3 and 6 *Septembris* 1686.—The Lord Naper (who was alfo Laird of * No. 642, Carnock) dying in France, his maternal estate of Napeir went to his p. 287. aunt Madame Brisbane; but his Father's fortune (which was the best) fell in debate, betuixt Sir William Nicholfon of Tillicoultry, as air maill and of tailzie, and the 3 daughters of Sir Thomas Nicolfon, as airs of lyne, married to Greenock, Mochrum, and Bancreiff; who, raifing breives to ferve, ane bill of advocation therof was prefented by Tillicutry, as ferved air maill in generall, and having a declarator depending of his right, which was *actio prejudicialis et lite pendente nihil est innovandum*. Answered, 1^o The defigne of his declarator was, that they, as lineall airs, fhould enter and denude, which they could not doe without a fervice, fo he had no prejudice. 2^{do} The lands lay in non-entry, which behooved to be obviat. Replyed, If they ferved, he would be put to the unneceffary trouble of a reduktion. The Lords met could not advocat, (tho' it was done to Mitchell in Prestonpans, and to Napier of Wrightfhoufe's airs on ane *ultimus hæeres*;) but finding the air-male feared they being ferved, would obtain the poffeffion, they would not formally fequeftrat the rents, (which belongs only to the wholle Lords to doe,) but difcharged them to medle till Candlemas. It was objected againft the fervice, 1^o That the executions ware null, becaufe, by the [16th] A& of Parliament in 1672, none but Wryters to the Signet can be Clerks to fervices; *et ita est*, the Clerk to the granting the warrand for executing the breives was no fuch Wryter. 2^{do} By the 94^t A&, Parliament 6^t, James 4^t, in 1503, the breiff moft be execute before the officers of the Toune; which this was not. 3^{tio}. Sir John Dalrymple, tho' their Advocat, was Chancelor of the Inqueft. Answered to the 1^o, A Wryter to the Signet neids not to the preparatory a&ts, but only on the day of the

service. To the 2^d, The A&t is in defuetude. (See Sir G. Mck.'s Note on it.) The Macers proceeded to serve, reserving the air-male reduction, as accords. But if a thing be evidently null and informall, the Judge by sustaining of it *litem suam facit*. Then the airs debated who should carry the head of the corpse. To shun this the Earle of Lithgow, as his unckle, got it. Then they strugled for the right hand, which seimed due to the air-male, such dignities not transmitting to weemen.

4 *Septembris* 1686.—Orbiston is liberat out of prison on caution, and to discover any plotting or caballing, if any was.

* No. 643, p. 288. 7 *Septembris* 1686.—This is the first Privy Counsell after the Chancellor's returne, wher news and revolutions ware expected; but litle appeared yet in publick. Melfort's patent of ane Earle, intayling the dignity to his sones of this present marriage, to the injurie of his sones of the first bed, was red,—(and not Lord Charles Murraye's, Atholl's 2^d sone's, patent to be Earle of Dinnimuire, which was kept back, to shun all competition for precedency.)

Item, Generall Drummond's patent to be Vicount of Strathallan; (for none willingly are Lords now, since Kinnaird was made one;) and thus he will not wait to succeid to his brother, my Lord Matherdey, *Mater Dei*, but steps in before all the Lords. They are recorded.

3^{tho}. The Non-conformist Ministers in Blacknesse, Basse, &c., as Mr. George Johnston, &c., are furder enlarged on caution; and a Committee named to consider upon their case.

* No. 644, p. 288. 9 *Septembris* 1686.—At Privy Counsell, ther is a letter from the King, making the Earle of Traquaire, (a youth litle past minority,) to be a Privy Counsellor; and he being Popish is admitted without the Test. This is in imitation of the English Privy Counsell, wher the Popish Lords who ware in the Tower, as Powis, &c., are received. They may come, like the old Imparte Chambers in France, to be halfe and halfe in all Courts, Privy Counsell, Session, &c.

Eodem die.—The Commission for [examining] Queansterrie's accounts

required him to sign them; he answered, Never any Treafurer did it before. Replyed, The King had called for them, and to send a double to him was not sufficient; and it should not preclude him from omiffions. They designed to make him liable for annuel-rent from the tyme it was in his hands; but it seemed odd in Duke Hamilton to question the King's discharge he had for some preceeding years: No Officer of State can get more, and is not secure if he be not secured by that.

Eodem die.—At Privy Counsell, they discharge all bills of suspension of decreits for Conventicles, privat baptifmes, &c.; that being matter of Governement, and referred to the Privy Counsell by a former Act in 1682.

Eodem die.—At Criminall Court the dyet is deferred in the criminall proces raised by James Bunton painter, againft Patrick Chalmers Deacon of the Wrights of Edinburgh, and George Porteous herauld-painter, for robbing his house, and taking away his pencills and colours. 2^{do}. For affuming the King's authority, by imprifoning him without the Magiftrats. 3^{tio}. For threatning him with tortor, which only belongs to the Privy Counsell. Answered to the 1^o, Generalities *non relevat* unles he fpecially condefchend on the toalls and instruments abftracted; *in furto rerum plurium earum numerus eft designandus, l. 19, et l. 52, §. linea D. de furtis*. 2^{do}. No theft, becaufe being my prentife and jurnyman, and I finding that ye confumed the one halfe more collours then the work required, I got the Deacon's concurrence to fearch your house, which is ufual in fufpitions, and found my oun goods with you; and if you'l prove you got them any where elfe, *relevat*. To the 3^d, The incarceration was by the Proveft of Edinburgh and Bailzies order, and not *privata autoritate*, nor by the Deacon and Trade, (tho' in fome cafes they may,) and the imprifonment was nather wrongous nor unjust, becaufe he was tane entring in a combination with the reft of the jurnymen, that they should not ferve their mafters under 14 pence a-day, befide meat and drink, and bound themfelves to it by oath, contrare to the act 30 in 1424, act 78 in 1457, [and] act 43 in 1555,

* No. 645,
p. 288.

againſt leagues and bands, declaring them ſeditious: And Carpzovius in his Criminalls, *Quæſt. iii. de incarceratione reorum*, ſayes *indicia præcedentia* are enough to warrand the proceeding to imprifonment; and the Proveſt is Shiref, and hes power; and the preparative of ſuch a combination may be very bad to other Trades, eſpecially their maſters being now bound for them, by the late bond againſt tumults. To the 3^d, *Territio verbalis non eſt tortura*, ſayes Carpzove, *Quæſt. 117, num. 47, et ſeq.* And one might ſay, if you will not diſcover the truth, the Privy Counfell (who hes the power of torture) may gar you doe it. The perſhuar preſſing (becauſe ſome of his witneſſes ware abſent) for a continuation, it was refuſed, it having been granted once before.

* No. 646, 14 *Septembris* 1686.—The Lords of Seſſion meiting, young Cadell is brought out of the Caſtle, and is liberat after a reprimande. Boyne is alſo reprooved by the Chancelor for provocking him.

2^{do}. At Privy Counfell, Maxuell of Kirkconnell, and Blair Drummond, are admitted the King's Receavers and Caſh-keipers, in place of Hew Wallace, Alexander Milne, &c. And John Drummond factor [is] made Warden of the Mint, in place of Alexander Maitland.

3^{tho}. Earle of Dundonald takes his place as a Privy Counſeller, without the Teſt.

4^{tho}. A letter from the King is red, laying aſide five from being on his Privy Counfell, viz., the Earle of Mar, Earle of Dumfreis, Earle of Louthian, Earle of Kintor, and Lord Roſſe; they following the fate of Earle Glencairne, Gofford, Sir William Bruce, and of the Biſhop of Dunkeld, King's Advocat, and Pitmedden.

Then 5^{tho}. The King's letter was red in favors of the Papiſts, taking them under his laws and proteſtion; and he gives them the private exerciſe of their religion, with a Chapell in the Abbey; and commands his Privy Counfell, and all his Judges and Magiſtrats, to maintain them in their rights and priviledges; (which ſome aſked what they ware;) and indemnified them againſt all the Pænall Laws, and, *per expreſſum*, againſt theſſe of traffiquing and drawing others to their religion; which ſeemed to ſome ane od and unreaſonable allowance. See A& 24, in

1587. It named his Chaplains and others, which is the inferior orders of *Acolythi ostiarii*, &c. Its narrative extolled the Roman Catholiques services to the Croun, and extenuated and declamed on the disloyalty of many Protestants; and reflects on some of the Members of the late Parliament; and all are discharged to disturb the Popish worship.

An answer is appointed to be prepared to it against Thursday the 16th of September; and accordingly that day two draughts came in; the one formed by the Bishop of Edinburgh, and the other by Tarbet. Against the last, Duke Hamilton excepted, that it called the King's prerogative a legall security and warrand for introducing this ease and favor to the Papists; he said, a thing might be a security, and yet not legall; as a protection against a caption secured the debtor, yet it could not be termed legall. The Chancellor asked briskly, Who would question his Majestie's power to relax the laws? So Duke Hamilton retiring said, He was not doubting the King's prerogative, but what neided the Privy Counsell declare it to be law? Sir George Lockhart President sat mute; but privily whispered, he would quit his hand ere he signed it so; thus the word *legal* was delet, and *sufficient* put in its place. Their answer ran in generall termes, acknowledging the King to be an absolut Soveraigne, and unaccountable to any but God; and that they acquiesced in his pleasure; which not coming up the full lenth, did not absolutly please; however the Chancellor would not signe alone as the head of the Court, but got all their hands to it on the 16th of September, and it was sent up. Thus they granted what the Parliament had refused. They say, the Bishop of Edinburgh, in a speech he made this day, insinuated as much, as if he called the last Parliament a seditious meeting.

16 *Septembris* 1686.—The forsaide answer is past.

2^{do}. Watson the Popish Printer, is, by a letter, made Printer to the King's familie, tho' Anderson's airs be by gift the King's Printer; and the Privy Counsell gives him the right to print all the Prognostications in Edinburgh, but afterwards the Clerks ware allowed to extend it to all the kingdome; and more will follow.

* No. 647,
p. 289.

3^{tho}. The King's letter is red, stopping the elections in all Brughs Royall, ather of Magiftrats, Deacons, or Counfell; and allowing the old ones to act and continue till his pleasure be farder knowen. (In England this was done by a legall proces of a *quo warranto*.) This is to secure the elections of the Commissioners to the nixt Parliament, better then they ware last; and accordingly my Lord Chancelor did signe a letter for each Brugh, intimating this stop; and obedience was given. I hear the Magiftrats of Edinburgh, when the Tuesday after Michealmas (which is their election day) came, entered a protestation, that they continued now to act as Magiftrats, not by virtue of their former election, but in obedience to his Majesty's command. This was to salve (as well as they could) their oath to keep the Toun's priviledges, and observe King James 6ths fet or decreit, ordaining ane annual election, and confirmed in Parliament. Some quæreed how far the Bailzies decreets, especially in adjudications or reall rights, might be now questioned? And if creditors to Borrowes would judge their moneyes secure now?

* No. 648,
p. 290.

Eodem die.—The Act of the 17th of June *supra*, is revived against Ministers or others uttering slanderous or seditious discourses against the King's designs, &c., with this addition, that the Ministers themselves (and not their Præcentors) shall read it four times a-year to keep them in mind of it: this they judged a kind of affront.

2^{do}. The King's indemnity and pardon to thosse of Argile and Tarbet who joyned in his Rebellion, is past, and proclaimed, for life only; and takes of intercommoning, and excepts heritors, officers, and ringleaders: And my Lord Strathallan General, is sent by the Privy Counfell as the King's Commissioner to thesse places, to apply this pardon, or exclude whom he thought fitt; and for his assistance he took with him Mr. James Grame Advocat, and James Hay wryter; and at Innerary he held his Court, and, without suspensions or stop, decerned restitution of all that was robb'd and stollen then.

3^{tho}. A new Sumptuary Act is past, (by vertue of the Parliamentary power given to the Privy Counfell,) discharging all imbroideries to be

worne, save what is made at home, and all other elufory inventions; as also all English cloaths, floured filks under the pretence of night-gowns; but allows the wearing of droped, spotted, figured, and chekered filk stuffs, where they doe not exceed 7 shillings sterling the yard.

17 *Septembris* 1686.—The Chancellor goes home to Castle Drummond.

21 *Septembris* 1686.—The Toune Counsell of Edinburgh, without any fault, citation, vacancy, or malversation on Mr. Robert Lauder their Agent's part, they install Mr. William Gordon Advocat in his place, at the solicitation and desire of the Chancellor's Lady and others.

Primo Octobris 1686.—At a Committee of Privy Counsell, ther is a * No. 649, complaint against Magnus Prince Dean of Gild of Edinburgh, that p. 290. Edward Whyte clerk to his brewary having dyed, he seized on his papers by a warrand from the Bailzies, no other Court then fitting, and conveyed fundry who ware abstracting his writs, and imprisoned one Somervill who refused to depone. The Committee did not find this arbitrary nor oppressive, he having been his servant and trusted, (on which ground the Privy Counsell did, at the Earle of Winton's desire, sequestrate Dr. Leviston's papers,) and by the deposition of witnesses they found embezzlement of papers; and therfor refused to liberate him till he deposed.

8 *Octobris* 1686.—Our Scots Parliament, by letter from the King and proclamation, is dissolved. They suffered the 21st of October, the day of its fitting, to approach very near.

Eodem tempore.—Sundry of the Non-Conformist Ministers are * No. 650, brought from Blacknes and the Basse, &c., before the Privy Counsell's p. 290. Committee for publick affairs, and offered them their liberty if they would ingadge not to preach; which they refused, pretending Christ's call; but they declared they submitted to the Governement, and owned

the King; and being posed anent defensive armes, they demurred to declare them unlawfull.

Eodem tempore.—The Toune Counsell of Edinburgh, by their A&, allow their Elders to take up the house-rents on oath, for establishing their Cesse and Ministers Annuity.

2^{do}. Mr. John Hamilton their Minister's *congee d'elire* to be Bisshop of Dunkeld, (it was first Brichin, but Drumond Bisshop of Brichin refused to accept of Dunkeld, saying, he knew no vacancy there,) being come, he resignes his Minister's place in the Toune Counsell of Edinburgh's hands, who installs Mr. Gairns the 2^d Minister in it. The Chapter of Dunkeld made some demur to choice him; but one of them threatned the Dissenters with a proces of treason for questioning the King's prerogative; and ther was ane order from the Chancelor to commit any sticklers to prision; so he was elected: And, on the 4^t of November 1686, he was consecrate at St. Androis; and then Mr. Gairns and Mr. Scott are made Doctors of Divinitie; as also Mr. John Robertstone, and Dean Annand.

14 *Octobris* 1686.—The King's birth-day is observed.

15 *Octobris* 1686.—The Toune Counsell of Edinburgh made choise of Mr. Thomas Burnet Regent at Aberdeen, in place of Mr. Robert Lidderdale their Regent deceassed, tho' Mr. Cunyghame Humanity Regent, and Mr. Martin in St. Androis, and Mr. Simeon M'Kenzie stood for it: but Burnet was recommended by the Chancelor, having this last Summer dedicat printed Theses to the Duke of Gordon, asserting the King's absolute power; and the Magistrats complement him with their presence at his entry.

* No. 651, 19 *Octobris* 1686.—The Synod of Edinburgh meits, where very litle
p. 291. is done; only, because the Generall complained that all ranks of persons ware remembred in their prayers, and the Army not; therfor the Bisshop appointed them to adde it; but forgot to give them a *formula*.

The Lady Innernytie's scandal with one Elliot, is mentioned by the Presbytrie of Dalkeith; but the Bischop waived it as not yet ripe. Their letters are villanously grosse, yet shee offering to turne Popish, Blairhall hir husband is forced to accord with hir.

22 *Octobris* 1686.—Mr. [Alexander] Patrick Sheills, prisoner in Edinburgh Tolbuith for Fanaticisme, escapes in weemen's cloaths. (See *infra* 18 *Novembris* 1686, the keipers deprived for it.)

Eodem tempore.—Letters come doune from the King, naming George Leslie to be still Provest of Aberdean; one Kennedy to be Provest of Stirling; my Lord Leviston for Lithgow, and John Bell for Glasgow; with power to them to choise and nominate their Bailzies, and other Magistrats and Counsells, being such as they will be answerable for: And for the rest of the Burrows, they are thinking on fit men to recommend. By the 8^t A& of Parliament 1609, Noblemen and Gentlemen are debarred from Magistracy within Brughs; and by their old charters they had the power to elect their oun Magistrats: Now they pay Lord Melfort 7 lb. 10 shillings sterling, for every letter, beside other men's dues.

Eodem tempore.—The Lord Melvill obtains a pardon for life and fortune: But payes a large summe to the Secretary.

24 *Octobris* 1686.—The Ministers read the Proclamation, discharging them to slander the Governement; tho' some interpret it to be an interdiction to reflect on Popery; this was the first Sunday as is ordained, *supra* 16 *Septembris*.

Eodem tempore.—At Aberdeen Synod, a woman delivers a letter to the Bischop, from an unknown hand, exhorting him to be firm in the Protestant religion, and to strenthen his Presbyters therein. *Item*, At the Synod of St. Andrews, one Mr. Sylvester Lyon minister at Killimuire having preached, the Archbischop took exceptions that he

prayed God might remove the evill that reigned in the land, and that he would give his Grace much wifdome, prudence, and understanding. The first, he faid, meant the King; the fecond, as if the Bifchop wanted thefe vertues; but he denyed he meant ather of thefe.

WINTER SESSION.—NOVEMBER 1686.

* No. 652, *Primo Novembris* 1686.—Falls on a Moonday, fo that 2 *Novembris* p. 292. is the first Seffion day; and on it Mr. Edward Wright Advocat, on a bill, is reponed again, and foberlie rebuked. (See him deprived, *supra* [26] *Martij* 1686, for fome rudenes to my Lord Pitmedden, who is fince put of; it's page 254.)

2^{do}. Sir Alexander Gibfon admits his fone to be conjunct Clerk of Seffion with himfelfe, thus putting him in poffeffion to prevent any de-
figne of the Register's. Mr. John Mackenzie Advocat had been admitted conjunct Clerk with Mr. Rory Mackeinzie, in place of Mr. Kenneth, Tar-
bet's fone, to whom he payed 14,000 mks. for it, the vacance præceed-
ing this. As alfo, Duke Hamilton was then receaved ane extraordinar
Lord of the Seffion in Queansberries place, who was laid afyde. This
practife came in with the long feven moneths vacance, when Newton
was made Prefident, and Kemnay a Lord in his place, in May 1682:
they thought it not fafe to delay their letters and admiffion till Novem-
ber. *Multa cadunt inter calicem supremaque labra.*

3 *Novembris* 1686.—The Lords are preparing the A& for cleaning
the ftreets of Edinburgh, referred to them by the late A& of Parliament
in 1686.

2^{do}. The creditors of Cromarty crave another Lord to hear and difcuffe
or report their feveral interefts, in place of Pitmedden laid afide. The
Lords named Forret.

* No. 653, 4 *Novembris* 1686.—The Lords calls in the Advocats, and appoints p. 292. fo many of them for the poor, and very juftly ordained the former ones
to continue and affift in the tabled proceffes.

2^{do}. In respect to the new A& of Parliament in 1686, ordaining Interlocutors to be subscryved by the Judge, which would take up much tyme, therfor they required the Advocats to attend at 9 howers, and to propone all their alledgeances *separatim*, that each defence might get a distinct answer and decifion.

3^{tio}. Doctor Donaldson pershueing the airs of Scoular factor in Rowen, the Lords fand them liable to pay a bill of 154 lb. sterling, on a missive letter writ by them.

Eodem die.—Major-Generall Grame of Claverhouse against Lin of * No. 654, Larg, reported by Forret. Claveris, as donator to a forfaultor, pershues p. 293. for payment of a summe due to the Rebell. Alledged, The Rebell was only assigney by ane executor, which executor being a meer fiduciary in trust for the behooff of legators, creditors, and nearest of kin, he could not validly assigne or transmit the right of the inventar of the Testament; and by the executor's civil rebellion no more could fall but his oun part. Answered, The executor was a creditor, and likewayes one of the nearest of kin; and so his assignation is good, at leif *quoad* his oun interest. 2^{do}. This is *jus tertii*, and not competent to the debtor, but only to the other nearest, &c. The Lords fand it *jus tertij*, and so repelled it.

Eodem die.—At Privy Counsell, a debate fell in betuen the two Clerks, * No. 655, Sir William Paterfen and Mr. Colin Mackeinzie, and each of them was p. 293. seizing upon the keyes of the Chamber with the Records and Warrands. The quarrell was, tho' they devided the profits yet Sir William was putting in his man Gourlay conjunct with George Rae, without Mr. Colin's consent.

2^{do}. The Sojor Alexander is, on a bill, liberat out of prifon, because the Father of Captain Hamilton, the Wright, who was recovering of the dangerous wounds he had given him, consented. In this affair there also arose a quæstion betuen John Lauder and John Jouffy, Chirurgian-Apothecaries; the one being first called, probed and pansed the wound, the other coming after him, did injuriously throw away his bandages, tho' he had walked according to art.

3th. The Cliddefdale Gentlemen who had found caution to appear the 1st of November, are continued till the Chancellor's overcoming.

4th. Ane Irish Minister, now settled in Scotland, petitions for liberty to bring over fix Irish horses, now prohibit by A&T of Parliament, to labour his gleib, it being very touch clayie ground. The Privy Counsell refused it.

5 *Novembris* 1686.—Is observed by the Lords of Session's not fitting, but no otherwayes. (*Vide supra* on this day.)

* No. 656,
p. 293.

6 *Novembris* 1686.—The Chancellor having got a gift from the King of 8000 lb. sterling, out of the wairds and marriages, since Kincairne's gift ended; and fundry of them being in this case, that they had resigned their waird-lands to themselves in lifrent, and their eldest sons in fee, with a faculty, wheron infestment followed; the father dying, and the son being minor and unmarried, he clamed the casualities, feing the negligence of the King's Officers, in passing that infestment, should not prejudice him nor his donators, especially if it be taxed, which seems to be a fixed rent. Yet there can be nothing due in this case, he not being appearand air, but in the fee at the tyme of the father's death, if ther was no fraud nor præcipation used, as in Colvill's case, 1667, [15th December 1666,] in Stair's 1st volume of his Decisions.

8 *Novembris* 1686.—Madame Brisbane is served air of line and tailzie to the Lord Naper, hir sister's sone, as to his estate not of Carnock (which came by his father) but of Naper; wher I, being hir lawyer, was one of the inquest with Yester, Colinton, Justice-Clerk, Drummailziar, Claverhouse, &c.

9 *Novembris* 1686.—The nice point betuen Andrew Charteris and James Macmorran about the executry and renuntiation, is debate; see it *infra* decided 16 *Novembris*.

This day, the Chancellor arrived from Drummond Castle at the Abbey, with a great train who met him.

10 *Novembris* 1686.—The King's Customs and Excise are roused, * No. 657, and set at Exchequer. There were severall caballs, viz., Kennedy, Dick, Binny, and Fleeming, Provosts of Edinburgh, and Sir James Rocheid in one; James Ofwald, John Hall, Captain James Crawford, &c., in another: But the 3^d carried it, viz., Sir Robert Milne of Barneton, George Hamilton, (a Collector, to whom Barneton had sold his lands of Binny and Blaikburne,) Sir John Young, &c. Niddry, a Papist, was a sharer, tho' the Act of Parliament anent the Test also appoints Tacksmen to take it: they had most, viz., 30,600 lb. sterling per annum. James Ofwald came within a 100 lb. sterling of it; but where Statemen are pre-engadged, they allow their party to out-bid all others, and promises them privily abatement, tho' in publick the contrare is declared; and heir they were allowed by their tack to regard no exemptions pleaded by Gentlemen importing goods for their owne use, feing it's not the product of their export, as was debate *supra*, 4 *Martij* 1681, page 191, in Polwart's case.

11 *Novembris* 1686, *post meridiem*.—At Privy Counsell, ther is 1^o red * No. 659, a letter from the King, nominating the Earle of Seaforth, a Papist, (by p. 294. the Marquis of Powis his father-in-law's power,) a Privy Counsellor, with a dispensation from the Oath of the Test. There was also a letter making the Duke of Gordon one; but being sent for to the Castle, and demurring to accept at that tyme, it was continued till the next Counsell day, the 18^t of November *infra*.

2^{do}. Mr. John Constable his gift from the King, of the Chapmen is red, to be Director of their Company, and to get 20 shillings sterling a year of a Horseman, and 10 shillings sterling of each dustifoot: *Queritur*, If men residing in Towns, but going to fairs and mercats with goods, shall pay? It was much opposed, and the like gift being [granted] in England was recalled. (See *alibi* more of it *apud me*.)

3^{tio}. The King's letter anent the Towne of Edinburgh's Magistrats is red, naming and continueing Sir Thomas Kennedy to be still Provost, and Magnus Prince to be Dean of Guild; and allowing them to choise

the rest of the Magistrats and Counsell, but then to send up their names to the King to be ratified and approved by him.

4^{to}. On this licence the said Toune Counsell meits on the 15^t of November, and proceeds to elect Fyffe, Nicolson, Sinclar, and John Marjoribanks, to be the four Bailzies, and Edward Marchbanks to be Treasurer, (George Drummond former Treasurer, having been 2 years in, and another place provided for him, *infra* 18 *Novembris*, by the Chancellor,) and they all took the oath anent the bienniall duration, with this quality, that it should only continue, and bind them during his Majesty's pleasure; and then sent up their election to the King to be confirmed by him.

5^{to}. Two being omitted in the Toune Counsell of Aberdeen, by the King's former nomination, the King, by his new letter, adds them.

6^{to}. Mr. James Lesly Advocat, son to the present Provost of Aberdeen, raises letters against Thomas Cushney, a merchand in Aberdeen, for a ryot in beating him in a quarrell that arose betuixt them on the King's birth-day, 14th October last; because drinking at his father's bone-fyre Cushney said, the win was not good, which Mr. James his son resented, and said, none but a rascall would say it; wheron Cushney meiting him the nixt day, at the mountebank's stage, he battoned him. He desisted from insisting, and componed it.

7^o. Sundry of the heritors of the Merse pershue the Earle of Home for putting out John Watson their Collector of the Cesse, at a meiting, without giving due and timeous intimation and advertishment to the Shire, and putting in Home of Haliburton, who was not responfall, in his place. Nor ware Linthill and Mr. Charles Home his cautioners sufficient for so great a summe; the first being denuded in favors of his son, and the other only fiar of Ayton, by a tailzie under clauses irritant. Continued.

8^o. Sir Alexander Forbes of Tolquhoun's suspension against Ogilby of Forglen is called, (see the King's letter, *supra* *Septembris* 1686, [*Julij* 15, p. 285;]) and the Lords finds the Letters orderly proceeded for Forglen's part of the fyne, superceeding extract, till the Commission before the Session took effect.

15 *Novembris* 1686, Moonday.—At the Criminall Court, Gordon of * No. 662,
 Avachie's nearest of kin pershues the Leiths of Harthill for slaughter p. 295.
 of their father. Alledged, 1^o. It's *res hac tenus judicata*, by a sentence
 of the Regality Court of Garrioch. Answered, That pershuit was only
 by the Proctor-Fiscall, and so the *vindicta privata* is yet entire; and it
 was collusive, procured fraudulently by yourselfe. The Justices repelled
 the defence. 2^{do}. Alledged, Ther was no hamefucken, because the
 invasion was not in his oun proper dwelling-house, but only in a
 tenant's house. Answered, He was proprietor of the ground wheron
 the house stood, and consequently of the house. The Lords repelled
 the aggravation of hamefucken, and fand it could only be in one's oun
 proper-dwelling house. 3^{tio}. Alledged, No convocation, because they
 ware not in armes under pay or cullors, 2 or 3 dayes together. An-
 swered, Ther was 10 or 12 with weapons. This the Lords Commis-
 sioners of Justiciary fand a convocation, and sufficient to infer it.
 4^{to}. Alledged, The wound was not mortall, being only a shot in the
 shoulder, and he lived 3 or 4 moneths after, and recovered of it. Answers,
 Offers to prove the wound was the cause of his death, and from that hower
 he decayed from evill to worfe; as was found in Mr. William Somervell
 and Bessy Renton's case. The Lords admitted both alledgeances to pro-
 bation. 5^{to}. Some of the pannells offered to prove they ware *alibi*.

The nixt day the probation being led, and the Affise inclosed, by
 their verdi& they fand the pannells only guilty of a ryot, committed by
 them on the person of Avachie.

18 *Novembris* 1686.—At Privy Counsell, The King, by a letter to * No. 668,
 the Bischops of St. Andrews and Edinburgh, impowered them to admit p. 297.
 any of the Conformist Ministers (who had deserted their Kirks for the
 Test) to any churches of their presentation within their Diocesess with-
 out the Test, as also in Glasgow; so far was the Archbishop therof
 beginning to be neglected. Some thought they should not imbrace it,
 because it was a strenthning the Prerogative on which the Toleration
 of Popery and dispensing with our laws ware founded. Others argued,
 This being a consideration extrinsick to their entry, and the fin only

per accidens (accidental,) they ought not to refuse a call or door opened to them by Providence. *Væ mihi si non evangelizavero.*

2^{do}. The Duke of Gordon, on a letter from the King, is now received on the Privy Counsell without the Test.

3^{tio}. In Home's cause, (*supra dicta*, pag. 294,) the Chancellor, by his favor, gets the complaint waved, and a Committee named to try the sufficiency of the caution offered for the new Collector, and to hear farder offers of caution; and thus sustained the election, tho' irregular. They were also seeking a new valuation of the Shire, and a redresse of quarterings and unjust extortions under the pretence of Cesse.

4^{to}. Mr. John Wanse and Arthur Udney, keepers of the Tolbuith of Edinburgh, are pershued by Sir G. Lockhart as *Advocat pro tempore*, for suffering Mr. Patrick [Alexander] Sheills to escape. (See it, *supra* 22 *Octobris* 1686.) Alledged, The warrand committing him did not bear close imprisonment, and that it was *casus fortuitus et improvisus*, and many had escaped so; as Captain Martin in weemen's cloaths, [18th] *Novembris* 1675, in Stair's Decisions; and Sir John Nisbet's; see Sir G. M'Kenzie's Criminalls, title Breaking of Prison, *in fine*. Jaylors are but *depositarij* of the prisoners, and so only liable *pro dolo et culpa*. Arthur had a separate defence, that it fell not in his moneth of serving; but it's *officium individuum, et tenentur in solidum*; as Magistrats are for the debt, in the case of the escape of prisoners. The Chancellor fell in a passion, and asked, Who drew their bill and defences? and I owning it, it irritated him the more on the publiſt pique against me. Tho' I could have minded the Privy Counsell and him, that his brother Melfort suffered Argile, a greater malefactor, to escape out of the Castle, which stood the country 200,000 lb. sterling by his invasion. The Privy Counsell deprived them for their negligence; and the very nixt day the Toune Counsell of Edinburgh, by the Chancellor's recommendation, (which was the designe of this affair,) placed George Drummond merchant and late Treasurer of Edinburgh, keeper in their place; and the Magistrats ware, for their neglect, threatned to be fyned without releiff of the Toune, and the keyes of the King's prison to be tane from them; but they redeemed this by the election foresaid.

19 *Novembris* 1686.—The Magistrats of Edinburgh, in their robes, falutes the Lords of Seffion, as is their custome.

Eodem die.—Sir George Mackenzie of Rosehaugh, late King's Advocat, puts on ane gown as ane ordinary Advocat, and appears in caufes at the bar with his hat of, (which is the most of the difference :) this the English Judges frequently doe when deprived by a *quietus*. * No. 669, p. 298.

21 *Novembris* 1686, being Sunday.—Mr. William Gairns, 2^d Minister of the Tolbuith Church of Edinburgh, and now Doctore, and made first minister, in place of Bifchop Hamilton; his edict is red by Mr. Ramsay minister, wherby the Bifchop requires any who can object against him to appear before him and Doctore Annand Dean of Edinburgh, on Friday nixt, in St. Giles's Church, and if not they will then institut him; which they did. * No. 670, p. 298.

23 *Novembris* 1686.—The King's Yaught arrived from London at Leith, with the Popish altar, vestements, images, Priests, and other dependers, for the Popish Chapell in the Abbey. * No. 671, p. 298.

24 *Novembris* 1686.—At Exchequer, the Lords refused to set the inland excise upon the brewings, because in the roup ther was no more bid for it by Sir James Dick, &c., but 19,000 lb. sterling, which, with the excise arising from the outward commodities from abroad, would not make up the King's quota of 40,000 lb. sterling per annum; but on Friday the 26th of November, being again exposed to auction, it was subdivided into fundry hands, some becoming Taksmen for the excise of ale of one Shire, and some for another, wherby the quota was compleitly made up; and the Clerk-Register claiming 30 lb. sterling from each of them, he was ordained to subscribe their tacks without it, they having it so dear; tho' he called it his due. * No. 674, p. 299.

25 *Novembris* 1686, afternoon.—At Privy Counsell ther are three letters from the King anent the elections of Brughs, naming Sir William * No. 676, p. 300.

Paterfon Clerk of the Privy Counsell, to be Proveft of Haddington ; one Hay to Perth, and Raith, Halgreen's brother, to Dundee ; and naming the wholle other Magiftrats and Counfell.

* No. 677, 26 *Novembris* 1686.—The Lords ordain the Advocats to attend them in the morning by 9 howers, under the amand and pain of a dollar if any be called to a caufe in the Utter Houfe and be abfent, and of 2 dollars if called for in the Inner Houfe.

Eodem tempore.—The Papifts having, by Watfon the Popifh Printer in the Abbey, printed ane Answer to the converted Jefuite Abercrombie's book, called "Proteftancy to be Embraced," wherein they prove it's impoffible to be faved in the Proteftant communion ; and having dedicate it with a preface to the Lords of Seffion, and præfixed all their names, the Priests, by the Chancellor's favor, took the confidence to deliver the Lords their copies, making them patrons to a book difgracing their (our) ounne religion.

* No. 678, 27 *Novembris* 1686.—Sir William Sharp of Scotfcraig comes from London, having obtained from his Majefty, for paying the debt his unckle Sir William expended for the King, when he was Cash-keeper, ane affignment on the tack-duety, and rents of Orkney ; at which Duke Hamilton (who affumes almoft all the manadgement of the Exchequer, which makes fome miftakes betuen the Chancellor and him) ftormed, faying, None fhould uplift the King's rents but his Commiffioners ; and his penfioners and others fhould only have precepts on them, and not affignations on the King's property ; for that made them the King's Treafurers *pro tanto*.

30 *Novembris* 1686.—Being Tuefday, and St. Andrew's day, wheron the Papifts confecrated, at leift initiated their Chapell in the Abbey by holy-water, and a fermon preached by Widrington. They bragged this was a great providence, that it fell on the feftivall dedicat to the Patron of Scotland ; but they can eafily contrive, and make themfelves authors

of fuch providences as theſſe. Some affirmed they would not ſolemnly confecrate this Chapell; for probably it would returne to vulgar, ſecular, and common uſes again: and ſeing fuch multitudes flock to them, they behooved to have a larger place for worſhip, meaning the Abbey-Church, which they took afterwards.

Primo Decembris 1686.—The Litfters of Edinburgh being erected by * No. 683, the Toune Counfell of Edinburgh, with the Bonnetmakers, on a recom- p. 303. mendation from the Parliament in 1681, with the priviledge of excluding all others not tryed by them, within the Toune's liberties, they perſhue a reduction and declarator againſt the Litfters of the Cannogate, that they have no right to work but by their licence. Alledged, The Edinburgh Litfters, perſhuars, had no intreſt to crave produktion of their writs and rights from the Barons of Brughton, and other authors, they ſhowing no right from them. Answered, They derived right from the Parliament, wher all Scotland was repreſented, and ſo might call for all their rights. Yet the Lords, on Saline's report, fand the defenders oblidge to produce all rights derived by them from the Toune of Edinburgh, who ware the perſhuars immediat authors, but not their rights from the Barons of Brughton, except they produced the Toune's right from the Bellendens of Brughton. See Stair's 2^d volume of Decifions, [24th November 1671,] Sutherland and Stranaver's caſe againſt Erroll and Marſhall, how far one Nobleman can force the produktion of another's patents, wherin he hes no intreſt, but only clames precedence.

2 *Decembris* 1686, *poſt meridiem*.—At Privy Counfell, Arthur Forbes * No. 685, of Balvenie, a Papiſt, perſhues one Duff, for diſpoſſeſſing him out of p. 303. ſome lands.

2^{do}. Byres of Coats perſhues the Toune of Edinburgh, and their Baxters, and Bailzie Thomas Robertſone's ſones, as repreſenting their father, for reſting a milne-dam on his ground, and bigging their girnell-houſes within his property, and winning the ſtones out of the quarries within his ground; and tho' this was 30 years ago, and a caſe meerly civill, and the paſſive titles libelled, (which was never the ſtyle at Privy

Counfell before,) yet he being a Papist, the Chancelor referred it to a Committee.

3^{tho}. One Gordon, by the Chancelor and Duke of Gordon's means, is put in to be Professer of the Orientall Eastern tongues in the Colledge of Glasgow, tho' ther is a Professer of Hebrew ther else, and ther is no flock nor fund for him; and the Archbischop of St. Androis voted for it with this reason, becaufe he heard it was the King's pleasure he should have it.

* No. 688,
p. 204.

3 *Decembris* 1686.—Sir James Rocheid Clerk of Edinburgh, gives in a petition to the Privy Counfell, bearing, that he had payed 100 lb. sterling to my Lord Register, for getting up some evidents relating to the Burrows their priviledges in France, and exemption from the 50 fous per tun, which ware lying among the publi& Records of the nation; and therfor craved their Lordships would ordain the Toune of Edinburgh and Burrows to repay him, it being *ratione officij* he did it, which *nemini debet esse damnosum*.

* No. 690,
p. 304.

6 *Decembris* 1686, Moonday.—At Criminall Court, it was reported, one had murdered a woman near Dalkeith, and cut off hir head, becaufe meiting hir on the hy-road, shee had discovered to him hir acquaintance shee had been receiving 100 mks., and had hid it in the plats of hir head, to secure it for fear of robbery; and he barbarously carried hir head in his wallet, not having tyme to take out the money; and being challenged as bloody, he called it a neat's-liver. Some questioned the matter of fact of this relation.

2^{do}. Some mo Argyle heritors are forfaulted in absence for joyning with Argyle in his Rebellion; and their armes are torne at the Crosse of Edinburgh with sound of trumpet.

3^{tho}. Ther is ane advocation raised of a pershuit from a Bailzie of a Regality to the Justices, (tho' they may repledge from them;) and the King's Sollicitors repeeting their reasons of advocation; it was answered, The Bailzie had judged it already, and denounced him fugitive, and so it was terminat by a sentence before the advocation.

7 *Decembris* 1686.—Duke Hamilton, one of the Commiffioners of the Treafury, observing that ther ware many fignators obtained from the King, changing the waird-holdings to taxt-waird, he wrote up to the King, and caufed his fone Arran prefent it, that this was a læfion to the revenue, and that it ware better to make them feu, as the 72^d A&t, in 1457, requires, and the [7th] A&t in 1647 renews it, and this would give the King a conftant revenue, inftead of ane uncertain taxed-duety. Secretary Melfort took this addrefse without him very ill; and will not fuffer the Exchequer to paffe any fuch change of holdings, till they come firft to him, that he may get his dues.

* No. 693,
p. 305.

Eodem tempore.—Sir Æneas M'Pherson Advocat arrives heir from the Court, with very large recommendations, being turned Popifh.

9 *Decembris* 1686, *post meridiem*.—At Privy Counfell, the cautioners for Home of Haliburton, whom the Earle of Home's party had choifen to be Collector of their Ceffe in the Marfe, (*supra pag.* 294,) perfhues Lanton, Sir Patrick Home, and fundry other heritors, for defamation, in refufing to accept fixteen gentlemen offered as cautioners for the King's Ceffe. Answered, That the moft part of their yearly rents was not worth a years Ceffe of that fhire; fuch as Mr. George Dickfon, Renton of Billy, Advocats, &c.

* No. 699,
p. 306.

2^{do}. One Hamilton perfhues one Maccall for a ryot, in violently breaking up the doors of a malt-kilne at Bathgate, and carrieng away his victuall. Alledged, He was his menial fervant, and refufing him the key, he might break up, as a father and mafter alwayes have been permitted to doe. Answered, I had a tack of it, and fo you could not fummarly expell me. It was committed. This was *res minima* for a Shireff, and not worthy of the Privy Counfell: but the Clerks draw all they can get to them.

10 *Decembris* 1686, *post meridiem*.—At Exchequer, ther is a penfion of 500 mks. per annum paid in favors of Grame of Deuchray.

* No. 701,
p. 306.

2^{do}. Ther is a debate, whither the Waiters fhould refide at Borrow-

ftounneffe, as Duke Hamilton craved, or at Blacknes, for which they produced a decreet obtained by the Toune of Lithgow.

3^{tho}. Mr. William Wallace having ane infeftment out of the barony of Cefnock for 20,000 lb. Scots, confirmed long before the cryme for which Cefnock was forfaulted, and his daughters not being entered fince his deceaffe, which was in 1673, Blair Drummond, for the ufe of Melfort, the donator of the forfaultor, gets the gift of this non-entry, *quod valet feipsum*, tho' it was ane hermophrodite and anomolous right of property, as well as of annuel-rent.

4^{tho}. The Earle of Balcarhouse being admitted one of the Treafury, ther was a letter from the King difpenfing with his taking of the Teft; which was for a preparative and leading cafe to others.

* No. 703, 11 *Decembris* 1686.—Mr. James Dalrymple Clerk, fufpends Alexander
p. 306. Monro one of the Under-clerks from his fervice; becaufe, contrare to his command of giving fome proceffes for extracting to one James Hamilton, he had given them to his brother James Monro. They are agreed.

Eodem tempore.—John Gibfon having been Proctor-Fifcall to the Bailzie Court of Edinburgh, in Proveft Drummond's tyme, and turned out by Proveft Kennedy, and one William Leggat placed; Drummond of Blair interpoſes, that Legat may be laid afide, and John Gibfon reponed again.

Eodem tempore.—Ther is much robbing at this tyme, under night, both in Edinburgh and about it, by Dumbarton's fojors, &c.

* No. 704, 14 *Decembris* 1686.—The Dutcheffe and Earle of Lauderdale's cafe
p. 307. (*de quo ſupra pag. 302*) is heard in prefence. It was contended for the Earle, The Commoners ought to be examined, (they being all her ounge friends and truſties,) whither or no it was not a part of the bargain, that ſhee ſhould pay the Englifh debt, and that in fortification of hir letter, bearing, in generall, that ſhee had undertaken great payments, and

of the presumptions, that shee never, in all hir clames, charged the English debt on my Lord Lauderdale; that the Lords, *ex officio nobili*, had oft done this; as in Lauchlan Leslie's case, about a bond of Stuart of Inner-nytie's, on very slender presumptions; in Collonell Fulerton's case with the Vicount of Kingston, in Stair's Decisions, 8 *Januarij* 1663, as also page B 273. See also Stair's Index of his 2 volumes of Decisions, *voce* Witnesses *ex officio*, wher ther are mo then 20 instances of the Lords doing this; and lately in Richard Cunyghame's case with Duke Hamilton *supra*, 18 *Martij* 1686, and the cases ther cited, page 252: and that shee ought to give hir oath of calumny, that being introduced by our law as a remedy to cut of pleas, wher a partie's oun ingenuity is appealed to; and is injoynd expresly by the 125^t A&, Parliament 1429, and then again at the erection of the Colledge of Justice in 1537. Answered, This is to subvert our law, wherof thir two are the *prima principia*, that a promise is not probable but *scripto vel juramento*; 2^{do}. That a matter above 100 lb. Scots cannot be proven by witnesses; and Sir G. M'Keinzie's small Law Institutions ware cited for this in 2 places, viz., Part 3, Title 2^d, page 229, and Part 4, Title 2^d, page 365, who answered, *Regulariter verum concedo; ex officio nobili, nego*. Replyed, Wryte can only be tane away by a write, *idem eodem modo dissolvitur quo colligatur*; it's true, witnesses have been admitted *ex officio nobilissimo* in some cases, such as trusts, circumventions, *vis et metus*, concussions, tryalls of falsehood, in depositat or undelivered evidents, or for clearing dubious and ambiguous clauses, but never in so clear and precise a case as this; and that it ware better the kingdome contributed to support Lauderdale's family, then to passe this bad preparative. The President declared, That, according to the favor of the circumstances, the Lords had oft granted such expiscations by witnesses, and had as many tymes refused them; and therfor craved the Lawyers not to expatiate on generalls. Sir G. M'Keinzie said, To cause Lauderdale ratify, and likewayes to pay the English debt, was to make his ratification the winding-sheet of the Earledom. Sir John Dalrymple added, That it was a ravenous cormorant appetite in hir to devour all; which reflections ware ill resented. Shee alledged, The great payments named in hir letter ware not the

English debt, but hir husband's funeralls. It was urged for hir, That the faith of witneses was turned so vacillant, that our law had derogated much from their testimonies in admitting them; and this is also the jealousy of France and Flanders, as Sir G. M'Keinzie observes their customes in his Notes on the 80th A& of the 6^t Parliament of King James the 6^t, in 1579. See my Marginall Notes on that A&, and the subsequent one ther.

The Lords by their Interlocutor, 17 *Decembris*, before answer, ordained the witneses insert or subscribing in the bond of ratification, or any other witneses who ware present at the commoning, at or before the subscribing the said ratification, to be examined, if it was any part of that agreement, that the Dutchesse should pay the English debt, reserving to themselves at the advising, to consider what this should operat; but refused to examine in generall any commoners at other tymes, before or after the ratification; because Lauderdale being called in, it was asked him, If ther was any posterior agreement after the ratification? And he said, He knew none. He was dissatisfied at his openness, seeing the use they made of it.

Then on the 18^t of December, (which being Saturday, was the last day before the Vacance,) Lauderdale procured a new hearing, and before the Lords could get the debate advised, 12 howers was cryed. Yet the President caused close the doors, and the Lords fate still, (tho' it was Vacance tyme this day after 12,) and granted a Commission (not having assigned a day before) to London, to examine the witneses ther; alledging, the Lords had fully resolved on it before, to adhere to their former interlocutor; and so it was no judiciall a&. But Lauderdale reclaimed, and threatned to appeal to the King. But the Minute-Book of this day not being red till the Session fate doune again, the 11^t of Januar 1687, the extracting the Commission was delayed.

And the cause being again called on the 12^t of Januar 1687, it was alledged by Lauderdale, The former Commission was null, it being pronounced on the 18^t of December, the last day of the Session, after 12 howers, and so in the Vacance, when *omnis actus judicialis cessare (filere) debet*. 2^{do}. It could not by A& of Sederunt be extracted till it was red in

the Minute-Book, and 24 howers thereafter : But that was alledged to be only for the Utter-Houfe ; but the reason is the fame in both. The Lords having advifed it of new, they prorogat the dyet for reporting the Commiffion to the 1st of Februar, (the 14th of Januar was the firft day,) and allows any of the 2 parties to report the Commiffion, (for Lauderdale's main ftudy was to caft it of this Seffion ; but he could not get it done,) and refufes to examine ather the Dutcheffe or the commoners, as to hir promife at any fubfequent commoning, no agreement having followed thereon ; but ordains the Dutcheffe hir oath to be taken, if by the binding agreement mentioned in hir letter produced, fhee did not mean ane agreement by which fhee undertook to releive the fufpenders of the Englifh debts : And finds the alledgeance, that the Dutcheffe promifed to give to the fufpenders the Duke of Lauderdale's books relevant to be proven by hir oath ; and grants warrand to Caftlehill and Drumcairne to take hir oath at hir ounie lodgings. Then we craved ther might be a diligence granted for citing the Laird of Nidry, and Sir William Sharp, to be prefent when hir Grace fhall depone. The Lords allows theffe perfons to be prefent when fhee depones, if the Earle of Lauderdale can bring them, but refufes to grant a diligence for citing them to that effect. But afterwards, on a bill, they allowed a diligence. (See more, *infra* pag. 318.)

15 *Decembris* 1686.—At Criminall Court ther are 4 robbers con-
demned to be hanged, viz., the 2 men who robed the minifter Iruing at
Humby Bridge, (one of them was his ounie fervant,) in October laft, beat-
ing him with many ftroakes. They ware hanged on the 17th of December,
at the Gallolee betuen Leith and Edinburgh, and hung up in chains :
they confeft a covetous habit, that they never faw any thing but they
defired to fteall it. The other 2 ware of Dumbarton's fojors, who had
come into houfes at the Clok-miln and Dudifton, and robbed the poor
peeple of what they could find : they ware alfo sentenced, but ware
repreived a while, becaufe they difcovered others, and particularly a
fmith who made falfe keyes to them, and one Young, a tinkler in Alloa,
their captain.

* No. 706,
p. 308.

* No. 707, 16 *Decembris* 1686.—Maxuell and Falconer reported; wher the Lords
p. 308. fand a *Novodamus* discharged all præceding feu-dueties.

* No. 708, *Eodem die, post meridiem*.—At Privy Counsell, Nidry, a Papist, is
p. 308. admitted a Privy Counsellor.

2^{do}. George Porteous Herauld Painter pershues Archibald Buntein, Sir G. Mackenzie's fervant, for invading him in the Hy Streit, and beating him. Alledged, You ware the first aggressor, for you assaulted and beat me the day before, and so *compensatione tolluntur*. Replyed, That was but a *chaud-mella* and accidentall rencountre, but yours was a deliberat forthought affassination; having gathered Auchlossan and fundry with you, you treacherously sent for me out of my house to speak with a friend, and then fell upon me; and selfe defence most be *incontinenti*: and he offered to prove all this by his oath. It was committed to Tarbet and the Prefident.

CHRISTMAS VACANCE.

No. 715, 24 *Decembris* 1686.—Generall Douglas is ordered by the Chancelor
p. 311. to choise some Popish souldiers out of Dumbarton's Regiment to guard their Masse Chapell on Zuille-day, for fear of disturbance. The accidental going off of the fentinell's gun the Sunday before had frightened them.

25 *Decembris* 1686.—Sir John Dalrymple parts for London, and comes back in Februar King's Advocat.

[ANNUS 1687.]

2 *Januarij* 1687.—Some of the Ministers omit to read the proclamation against seditious Sermons, alledging it was unclear in the dyets. On a suspicion that the prentises and other boyes intended to make a procession of the Devill's effigies and the Pope's in his armes, with their mottos, (which was thought to be but a shame, ther being no such designe,) the guards ware doubled, and the Colledge watched, &c.

Eodem tempore.—Dr. Strauchan Professor of Divinity in the Colledge of Edinburgh, is quarrelled by the Priests for teaching in his dictats to the students, some what reflecting on the Pope's assuming a deposing power, *et de primatu Papæ*; so his Moderation Sermon lately to the Synod will not excuse if he trip in the leift.

Eodem tempore.—Queanberry procures a letter from the King, ordaining thosse he had commissiounat to examine his accounts, to take them in presently, and to put them to a clofs, and not delay him.

Eodem tempore.—William Hay Comisar-Clerk of Edinburgh, being forced to disappear for debt, Patrick Aikenhead transacts and officiats for him.

SESSION 1687.

13 *Januarij* 1687, *post meridiem*.—At Privy Counsell, the King's No. 717, letters nominating the Magistrats of Air, Culros, and Kirkcaldy, are red. p. 311.

Item, A letter and proclamation for opening the Mint in May nixt, and anent the species to be coyned, conforme to the late A& of Parliament.

3^{to}. Ane A& against the frequent robberies.

4^{to}. Mr. Robert Jouffie is pershued to make ane account of some money put in his father's hand, for a mortification to some poor boyes and maids, to get them callings and marriages.

5^{to}. Reid the Mountebank pershues Scot of Harden and his Lady, for

stealing away from him a litle girl, called the Tumbling-Lassie, that danced upon his stage; shee danced in all shapes, and to make hir suple he daillie oyled all hir joynts; and he claimed damages, and produced a contract, wher he had bought hir from hir mother for 30 lb. Scots. But we have no slaves in Scotland, and mothers cannot sell their bairns; and Physitians attested the imployment of tumbling would kill hir, and bruise all hir bowells; and hir joynts ware now growen stiff, and shee declined to retorne; tho' shee was at leift a prentife, and so could not run away from hir master: Yet some cited that of Moyfes's law, that if a servant shelter himself with thee against his master's cruelty, thou shalt surely not deliver him up. The Lords *renitente Cancellario* affoiled Harden on the 27th of Januar, for Reid was Popish, so he had the Chancelor's countenance.

6^{to}. Thomas Young merchand in Edinburgh, and late Treasurer, pershues Francis Scot, Tarras's brother, for a ryot, in beating him at the Crosse of Edinburgh; because he had charged him with horning on his bond.

No. 723, 17 *Januarij* 1687.—Reid the Mountebank is reseaved into the Popish church, and one of his Blackamores was perswaded to accept of baptisme from the Popish Priests, and to turne Christian Papist; which was a great trophee. He was called James, after the King and Chancelor, and the Apostle James.

No. 725, 18 *Januarij* 1687.—A Sheitlander pershues maills and dueties of some lands in Shetland, on a tack set to him by this King of Denmark's father. Alledged against it, This was treason for the pershuar to take rights of a forraine Prince, and a disclaming our King. Answered, The King of Denmark might be our King's vassall in thir lands, even as a Nobleman or Gentleman holding of the King might give a charter to his sub-vassall. But in Shetland they have no infeftments, but only Udall (allodiall) rights; and the Crown of Denmark of old had right to it and Orkney. The Lords ordained the tack and proces to be razed and destroyed, and the persuar to be infisted against for treason.

Eodem die.—Mr. Alexander Swinton of Merfington, and Mr. James Daes of Coldonknows, who had laid themselves aside from being Advocats in November 1681, because of the Test, are now, upon letters from the King, re-admitted by the Lords, without putting the Test to them, in respect the King, by his letter, declared he dispensed therewith by his prerogative royall. The Lords did not vote it, and hes not yet recorded their letters. They payed for each of them 7 lb. sterling to Melfort Secretary, who passes nothing *gratis*, but exacts even from the Officers of State and President, for their letters. *Queritur*, How far this entry is ane strenthening of the King's power, to dispense with and relax the Laws against Papifts? (See *apud me* the copie of thir letters.)

Eodem die.—The Commiffion granted by the King, under his Great Seall, to near 50 persons, to visit all our Colledges and Univerfities, was read, and the Members kept their first meeting. Our President Sir George Lockhart declared he could not act till he took the Test, according to law, which the Members present did; but this scrupulosity displeased the Chancellor. Some think they will purge our Colledges, and reduce them to their foundations, and inquire into their mortifications, and plant whom they please in them.

20 *Januarij* 1687.—The Lords, upon the account of Mr. George No. 728, Dickson's behavior with Castlehill, in examining some witnesses about p. 313. the thirlage forfald, betuen Alexander Hamilton Maiffer, and Sir John Ramfay [of Whitehill,] and David Plenderleith [of Blyth, writer;] they called in the wholle Advocats, and intimat to them, they most not stand near the witnesses when they depone, nor interrupt them by murmurations or fufurrings. Mr. George alledged, The witness was contradicting himfelfe, and my Lord was making his oath consistent with itfelfe, tho' he evidently saw he was perjured.

Eodem die, post meridiem.—At Privy Counsell, ther is a letter read No. 729, from the King, wherby he layes aside Mr. Alexander Cairnecrosse p. 314. from being Archbishop of Glasgow; *item*, from his place in Privy

Counsell. The Bifchop of Edinburgh, who was to fucceed him, caufed make ane A&t of Privy Counfell theron, (tho' not voted,) depriving a Bifchop, who is a Peer: Which they could not doe, whatever the King's letter might. It boor no reafons; but it was thought it contributed what Doctor Canaries, Minifter at Selkirk, deponed againft him, viz., that he incouradged him, after his offensive Sermon, to goe to London and print it, and lent him 20 lb. fterling to bear his charges; as alfo his wavering with the King, and his recommending of Queanberry. He begged a hearing and legall tryall, but he was laid afide without one. He carried faintly in the Parliament for the Proteftant religion, tho' he inclined againft the Toleration A&t.

2^{do}. Ther was ane motion of reftoring again the Secret Committee, and adding the Bifchop of Edinburgh therto.

3^{tio}. The Weft Country Heritors and Minifters, continued to this day under caution, gets up their bonds, and are fred on their granting their own fingle bonds for their perfonall appearance when called, without any definite tyme; but they ware ordained to attend the Commiffioners of the Treafury, who are impowered by the King to give doune of their fines, and to exact only a 4^t part.

4^{to}. Ther are fundry letters from his Majefty, nominating Magiftrats of Brughs, as Kinghorne, Bruntiland, &c.

5^{to}. Ruthven of Gairn's complaint againft Mr. William Clark Advocat, is heard, and Mr. Clark fred from paying him the 50 lb. fterling formerly decerned, till he firft find fufficient caution *judicio fifti et judicatum folvi*; if, in the count and reckoning betuixt them, Mr. Clark be not found his debtor, then to refund it.

6^{to}. Ogilby of Forglen difcuffes Sir Alexander Forbes of Tolquhoun's fufpention, anent Forglen's abfttracting from him a filver cup, (*de quo fupra pag.* [285,]) and makes his diffamation fo clear, that the Privy Counfell finds the letters orderly proceeded for Forglen's halfe of the fine, viz., 10,000 mks., the King having remitted the other.

7^o. Proveft Sleigh in Hadington againft Steill his tenant, for breach of arreiftment, convocating the liedges, and ftealling away his cornes on Sunday from his mafter, to defraud his hypotheque.

21 *Januarij* 1687.—Mr. Angus (*Æneas*) Maccloud, fervitour to No. 730,
 Tarbet Clerk-Register, and admitted conjunct Clerk of Edinburgh on p. 314.
 Sir James Rocheid's demission of the halfe of the office in his favors,
 he gave James Hamilton, his former colleague, back his money, and got
 1000 lb. sterling from this Maccloud: And the Toune makes two Acts,
 one against whores and beggars that comes from the country; and the
 other, that all the merchants shall attend the Exchange from 12 to
 halfe-one, under a fyne.

Eodem die, post meridiem.—At Exchequer, the Toune of Dundy being No. 731,
 pershued for a vacant stipend of one of their Ministers deceast, they p. 314.
 alledged, They imployed it upon one who preached, and catechized the
 parish during that vacancy: The Chancellor was clear, that this was
 not a pious use for which vacant stipends are designed by the [18th]
 Act of Parliament in 1685; but that they ware only for building or
 repairing bridges, &c., and not of Churches, for the parishioners ware
 oblidge to uphold thesse. Yet it was allowed to the Toune of Dundee.

2^{do}. Duke Hamilton had procured a signator of the waird and marriage
 of his daughter-in-law, [Mary] Dunbar aireffe of Baldune, under the
 King's hand: The Chancellor was dissatisfyed, for he had got the gift
 of all thesse of before.

23 *Januarij* 1687, being Sunday.—Ther is a house-conventicle of No. 734,
 Fanaticks taken in Edinburgh, by some of Drumlanrick's troupe: ther p. 315.
 ware fundry men and weemen imprisoned. This rigor seimed incon-
 gruous with the designe of Toleration of Popery; and the King passes
 all the Sectaries in England.

25 *Januarij* 1687.—It was debate, If a Superior gift the liferent- No. 736,
 escheat of his Vassall in favors of a 3^d party, for the behoof of the p. 315.
 rebell who, going to the horne again, and lying year and day at it, the
 Superior gifts that new liferent-escheat to a 2^d donator, and the two com-
 peting, it was alledged, That his wholle liferent was conveyed by the
 1st gift, and one man could not have two liferent-escheats.

No. 740, 27 *Januarij* 1687, *post meridiem*.—At Privy Counfell, Mr. Row late
p. 316. Minister of Dalgety, who is turned Popish, and quite his Church at
Lambas laft, yet by favor gets ane act, that he fhall have the ftipend till
Whitfonday 1687, notwithstanding one Mr. Gray is placed Minister there.

No. 743, 30 *Januarij* 1687, Sunday.—Keipt as a faft for King Charles's murder,
p. 317. tho' being the Chriftian feftivall, it fhould have been fhifted to another
day. The Prefbyterians oft kepted their humiliations on Sundayes.

No. 747, 2 *Februarij* 1687.—Francifca Cunyghame, and Johnfton,
p. 318. Warifton's fone, hir husband, againft the Earle of Glencairne. It's a
perfhuitt on a minute of contract betuixt Chancelor Glencairne and
Cunyghame of Bellyachan: Againft which the Earle had a declarator
of nullity, 1^o That it was ane undelivered evident, lying 38 years in
Porterfield of Deuchall the Wryter's hands, and produced by him in
ane exhibition. Answered, It was a mutuall contract, wherof ther is only
one double, and fo nather could, nor neided to be delivered. Replyed, It
boor regiftration, and fo each might have got ane extract; and it might
have been made publiſt by a proces. Nixt alledged, It contained
a *ſynallagma*, and Captain Cunyghame not having fulfilled his part,
the Earle was not bound; for *qui agit ex contractu reciproco debet
prius docere omnia ex ſua parte eſſe impleta, alias conditione cauſa
data ceſſat*. Answered, Captain Cunyghame's part was only the delivery
of writs, and in the end of the minute it bears, he gave up to the Earle
a back-band. Replyed, That cannot be the evidents meant in the firſt
claufe, conceived in the termes of a future obliſhment; and ather he
had fuch writs, or he had them not; if he had them, then he did not
fulfill by delivering them; if he had them not, then *dolus dedit cauſam
contractui*. The Lords, after a debate in prefence, fand Captain Cunyg-
hame's heirs could not ſeek implement of this minute of contract, in
regard they had not performed their oun part of that contract. Againſt
this, a bill was given in and refuſed; for the Prefident favoured Glen-
cairne. Then Glencairne's oath was craved, if he had not theſſe papers;
and being offered, they refuſed; and fo it was decerned.

The event of this plea (if the Earle had lost it) would have ruined him. Generall Drummond, as Johnston's brother-in-law, acted much for him; besides the Chancellor's owne inclination against Glencairne, whose Lady dyed at this very tyme.

3 *Februarij* 1687.—The Earle of Lauderdale having referred to the Dutchesse's oath, (*de quo supra*, pag. 207,) his undertaking the English debt, and his promising to give the family the Library of books; and shee refusing to depone on Interrogators what expressions shee had to the Bishop of Edinburgh, Nidry, and Sir William Sharp; Lauderdale gave in a bill, craving shee might depone thereon, and that these persons might confer with him in private before-hand, to refresh his memory. The Lords refused both, for his qualitie, tho' they have oft allowed it in other cases: And Castlehill pretended the new Act of Parliament in 1686, did not allow both the parties and their Advocats to be present at the deponing, but *alternative* one of them, in their option. Shee deponed *negative* to all. (See *infra* more, pag. 320.)

Eodem die, post meridiem.—At Privy Counsell, the King's lettres are red anent the Magistrats of Arbroath, and some other Brughs.

2^{do}. Ther is ane report made of the ryot, pershued by Byres of Coats, against the Toune of Edinburgh, by Lauderdale, (to whom it was remitted.) The pretended ryot was [committed] 30 years ago; but he alledged for his silence, that being ane excommunicat Papist, he could not get justice. And they found the Toune had done wrong, in laying their dam-head on his ground, and fanding his haugh, and had tane ten foot of him into the hy-way, and had built houses upon his ground, and digged stone quarries; (*non inedicatum cedit solo*;) and ordained some to consider what his damage might be: Which delay was to see if the Toune would compone. But that not succeding, on the 31st of March, the Privy Counsell modified (by the Chancellor's power) and decerned the Toune of Edinburgh to pay Sir John Byres of Coats, 400 lb. sterling for their encroachments on his ground, and for his damages; and, to secure him against after-claps, they ordain the

No. 750,
p. 318.No. 752,
p. 319.

Toune to quite him his fingle and liferent-efcheat, fallen in their hands as his superiors ; as alfo to fence his ground from inundations, and he to renunce the ground the houfes was built on, and 3 foot about them, (but his fone is fiar of the lands,) and referves him action againft Thomas Robertfon's and Laurie's airs, for digging the quarries, &c.

3^{tho}. Ther is a libell againft the Duke of Queansberry, that he, by his fervants and others, had committed ftatutory treason, (*Quæritur*, If fuch treason beailable? and I think it is,) in burning the houfe of Johnfton of Erfhaw, and killing one of the fones who made refiftance ; and this under the pretence, that they came from him as Shiref-principall, to fearch their houfe for robbers, and theives, and ftollen goods, which ware commonly refet heir. *Quæritur*, How far, in cafe of refiftance, they may raife fyre? For the 6th A& of Parliament in 1662, allows flaughter in thefe cafes, but not burning. Queansberry denyed any mandat, and alledged they fyred it themfelves.

Eodem tempore.—The King's Customers and their Waiters feize on 700 lb. fterling carrieng out of the Kingdome in cafh, contrare to the A&ts of Parliament difcharging the exportation of money, under the pain of confifcation. But it was alledged, this was a fingular cafe ; for it was not going out for merchandize, but to pay the Garrifon of Berwick.

No. 753,
p. 319.

Eodem tempore.—The Earle of Southesk being one of them who was nominat by the King to fit on Queansberrie's Treafurer accounts, and being abfent at the firft meiting, when all the reft took the Teft, and craving it now, the Chancelor refused to adminiftrat it, faying, It was out of doors. Southesk required them present, witneffes, that he had fought it, and fo he fould not incurre the loffe of his liferent-efcheat. The Papifts pretend, this being ane oath given to the King, he may remit it ; even as if I fould fwear to pay him 10,000 mks., he may difcharge me : But this *relaxatio partis* takes not place wher the oath concerns myfelfe, as weill as the difpenfor, as the Teft does ; that I fhall continue Proteftant, and never yield my confent to any thing that may

in the leift weaken it, or ftrenthen and increafe Popery ; tho' the King might relax me from the part of the oath relating to his oun prerogative, yet not from that part of the oath which concerns my religion. See Sanderfon *de Juramento, in fine de ejus irritatione, solutione et dispensatione*.

10 *Februarij* 1687.—At Privy Counfell, ther is a great debate, whither the Custom-Office fhall be kept at Borrowstounneffe, for which Duke Hamilton stood ; or at Blacknes, for which the Toune of Lithgow pled, and alledged the King's Tackfmen paying now fo great a duty, they ought to have the choife wher to put in the Waiters and Receivers. No. 758,
p. 320.

11 *Februarij* 1687.—Mr. Alexander Malcolme of Lochore Advocat, his letter from the King is red, nominating him a Lord of the Seffion, in place of Sir Alexander Seton of Pitmedden, laid aside in May laft, for his oppofing the Papifts in Parliament, (fo long was his rounge unfilled ;) and he fate 2 dayes in the Utter Houfe with the Ordinar, for his tryall.

2^{do}. Mr. John Buchan Regent at Aberdeen, is admitted Advocat fummariy on a bill, at the Chancelor's defire, who recommended that the Advocats take only 500 mks. from him for his entry.

12 *Februarij* 1687.—The Dutcheffe of Lauderdale's oath in the caufe betuixt hir and the Earle is advifed : Shee denyed fhee ever undertook the Englifh debt, and afcryved the great payments mentioned in hir letter to fome counts, and hir husband's funeralls, which fhee payed, knowing fhee would get releiff of the Earle ; and denyed that fhee promifed to give the Library to the family, or that fhee ever faw any difpofition therof by hir Lord. The Lords fand hir oath proved not the alledgeance ; and therfor fand the letters orderly proceeded, tho' fundry contradictions ware urged betuixt hir oath and hir letter ; and the King afterwards declared, hearing of hir oath, That fhee had acknowledged to him hir undertaking the Englifh debt. (*Vide fupra pag.* 318, and *infra pag.* 367 and 377, and 409.) No. 759,
p. 320.

13 *Februarij* 1687, being Sunday.—At night the Tolbuith of Edin- No. 759,
p. 321.

burgh is broke, and 16 malefactors and robbers escapes; yet George Drummond the keeper is not quarrelled for this, tho' Mr. John Wanfe and Arthur Udney ware put out [10th] November last for one rogue's escape, but it was at the door, yet it was in weemen's cloaths; and this was by a digging out a wholle [hole] in the wall, and lifting out the stones, and coming down on ropes. Two of them ware after found at Kirkliston, and being condemned, one of them was hanged at the Gallowly on the Friday after.

No. 760,
p. 321.

14 *Februarij* 1687, being Moonday.—At the Criminall Court, Mr. John Eleis of Eleifton, pershues William Lockhart for the deforcement of one Guthrie, and Messengers, imployed to bring up Anna Elphington, William's mother, by a caption, to depone on a diligence obtained by Elifton against hir, for exhibition of writs. Alledged, 1^o The pannell could not passe to the knowledge of ane affise, the dittay not being relevant, in so far as the caption was raised in the last King's tyme, and should have been renewed. 2^{do} Was raised against hir when *vestita viro*, viz., Carribber, and now she's a widow. 3^{tio} They wanted the concurse of the Magistrats of Edinburgh, and the Toune Officers. 4^{to} The proces wheron it was raised was sleiping. 5^{to} It was not libelled, that the Messenger shewed his blason. 6^{to} It was execut in December under night, after sun-set. Answered, Whatever informalities ware in the caption, he was not judge therto; nor could this warrand him to beat the Messenger; and the A&t of Sederunt, made *supra* 16 *Februarij* 1685, continued all diligences raised in the last King's tyme, because ther was no interruption in the government; and if a caption might be execut against hir when a wife, then much more now when shee was *sui juris*, it being a fundamentall in all policies and governments to attest the truth on oath, and it was only captions for debt that required the Magistrats concurse, wher the rebell was to be imprisoned, and not captions bringing only parties in to depone; and the proces was wakened, and so also this caption; and it's offered to be proven, he had the blazon, and shewed it; and captions may be execut at any tyme of day or night. (See Sir G. Mackenzie's Criminalls, title Deforcement.)

The Criminall Lords, by Castlehill's power, inclined to cast the libell, because it mentioned not the blason; tho' his breaking the wand of peace is the only symboll requisit to be libelled; but they continued the dyet for 8^t dayes; and then it was farther alledged, That hir name was interlined in the caption, and ther was no execution against hir on the 1st diligence, and so it was false. But the execution was abstracted. Then on the 21st of Februar the Criminall Lords having advifed the relevancy of the libell, defences, answers, and replyes, they continued the dyet to the 3^d Moonday of June, that the parties, in the mean tyme, might apply to the Lords of Seffion, and get their opinion on the forfaids objections against the caption, if they be sufficient to elide or mittigat the deforcement or not? (See the decifion of it *infra* pag. 335.)

Eodem die.—Sir John Dalrymple, now King's Advocat arrives, lately tuice in prifon as a malefactor, and in very bad circumstances with the Governement, comes from London to Edinburgh: his coatch brake with him at Tranent. He has got a præcept from the King for 1200 lb. fterling; wherof 500 lb. fterling was his fine [which] Queansberry, 3 years ago, and Claverhouse exacted from him; and the other 700 lb. fterling was for his charges in this laft journey, and for the losse of his imployment and abfence. He brings alfo home with him ane ample and comprehensive remiffion of all crymes to his father, my Lord Stairs, to his mother, his brether and fifters, and particularly for their refet, or converfe with traitors, and to his litle fon, who accidentally fhot his brother.

17 *Februarij* 1687, *post meridiem.*—At Privy Counfell, Sir John Dal-
rymple is admitted King's Advocat. 2^{do}. By a fpeciall letter, the Teft is
No. 768,
p. 322.
difcharged to be adminiftred to him; tho' this was not very neceffar, because the King's letter for a Toleration was alfo red, which difcharged the Teft in generall, and gave indulgence and permiffion to fome of the Christian perfuafions, viz., the moderat Prefbyterians, Quakers, and Papifts, and difpencing with the Penall Laws against them, and difcharging the Teft and other Oaths, and fubftituting a new Oath in their place. (See the printed Proclamation and Obferves on it befide me.)

This night a fyre happened in the Abbey, near the printing houle, and confumed some of their Popish pamphlets, and indangered their Chapell.

No. 769,
p. 323.

19 *Februarij* 1687.—The Lords upon a bill and Drumcairnie's report, modified to the Lady Balgoun, now relict of Sir David Dunbar of Baldune, 2500 mks. for hir mournings and aliment of the family, from the 12th of December laft, when he dyed, to Whitfunday nixt, allowing in the forend what fhee hes got already. Duke Hamilton (whose fon was married to Baldune's grand-child) ftorm'd at this, and craved dedu&tion for what provifions ware laid in the family at his deceaffe, fhee having none but two fervants to maintain. Hir good-son Sir G. Suty obtained this from Caftlehill his father-in-law.

Eodem die.—At Exchequer, ther was ane order from the King to pay Midleton's bygane penfions ; which fome conftrued as a preliminary to his difmiffing.

21 *Februarij* 1687, Moonday.—At Criminall (Court,) ther are two dead bairns found murdered by the whores their mothers, if not dead born. One of them was found drowned in a fack in the North Loch, and was laid a day at the Trone.

22 *Februarij* 1687.—A ferjeant flobs a fojor of Dumbarton's regiment, and is apprehended and imprifoned.

No. 770,
p. 323.

23 *Februarij* 1687.—Sir Andrew Ramfay of Abotshall and the Toune of Kirkcaldy, is reported by Carfe. (See them *supra* pag. [208,] *Novembris* 1685.) The Lords repelled the first reafon of fufpention and redu&tion, in regard of the anfwer and decreit charged on, wherby they fand ther was no fa&t admitted to be proven by the chargers anent the tennent's infolvency, and fo it was not null for lack of that probation ; and repelled the 2^d, bearing the decreit to be *ultra petita* for years after the libell, in refpe&t the fufpention is only for byganes preceeding the year 1677 ; and repells the 3^d reafon founded on the payment, as

being repelled in the decreit of fufpenfion as competent and omitted in the firft decreit: But what difcharges the fufpenders fhall instantly produce under the charger's oun hand, or what the fufpenders fhall depone they made reall payment of, in money to the Millar, (for eviting and difcovering collufion,) upon their getting of his refaits, alfo to be produced before extrafting this decreit, ordains the fame to be allowed.

Then Balcarras Proveft, and the Toune, gave in a bill, pretending that *numquam fufceperunt litem* for their tennents, except only by a bill given in by Sir David Thoires, who difclames that he was imployed for Kirkcaldy, but only for the Balfufney feuars. 2^{do}. If the Magiftrats, their predeceffors, malverfed in neglecting the Toune's affairs, they as fucceffors cannot be liable, feeing *delicta fuos fequuntur auctores*. Answered, 1^o. Ane Advocat's difclamation cannot deprive me of my *jus quæfitum*. 2^{do}. Magiftrats and their fucceffors in office *tenentur ex delicto predecefforum*, as in fubfidiary aétions for prifoners efcaping, &c., and if they have been *in dolo* or *culpa*, the prefent Magiftrats and the Toune hes recourfe and releiff for dammage againft them. The Lords refufed their bill; but yet found the letters orderly proceeded againft the laft Magiftrats only, (as being the fufpenders,) and their cautioners in the fufpenfion: Which was a ftretch on this pretence, That Balcarras and the Magiftrats put in by the King moft not be difcouradged. But who will now lend Brughs, or bargain with them, if this hold?

Eodem die.—The Colledge of Juftice's declarator againft the Toune No. 772, of Edinburgh, of their feveral priviledges and exemptions from annuities p. 324. for Minifters ftipends, impositions at the ports, and Leith harbor, and caufay maills, was this afternoon advifed. Two points ware left undecided: The one as to the Toune's criminall jurifdiction over the Members, in cafe of ryots; for which *Paulus Voet de Statutis* was cited: The 2^d, How far tradfmen could hinder the Seffion to bring in within the Toune and imploy unfreemen, as Taylors, Mafons, &c., for which instances ware brought on both fides. The Interlocutor is long, and neids not be here infert, becaufe it is printed by way of A& of Sederunt, and is lying befide me, and may be had eafily. What

the Toune gained was, it determined who ware Members of the Seffion, which cutted of many pretenders. (See the Informations about the Pope's bull, *apud me.*)

No. 773, 24 *Februarij* 1687.—The Chapter of Glasgow, (ther ware 18 Minifters
p. 324. of them, befide the Bifhop of Galloway Suffragan, and Conveiner Dr. Faw, &c.,) meits at Edinburgh, (which was not the regular place,) and, conforme to the King's *Congée d'elire*, elects Mr. John Paterfon Bifhop of Edinburgh to be Archbifhop of Glasgow, on the deprivation of Cairnecroffe; juft as he entred in Edinburgh, on the removall of Bifhop Young: And as elect, he took his place and precedence in the Privy Counfell after noon.

No. 774, *Eodem die*.—The Chancelor, as donator to the wairds and marriages
p. 324. perfhues Stewart of Innernytie; the Lords fand a gift of taxt-waird did not defend againft, nor comprehend a fimple waird.

No. 775, *Eodem die, poft meridiem*.—At Privy Counfell, the Privy Counfell's
p. 324. anfwer to the King's letter and proclamation of Indulgence is brought in and red, declaring, they conceive his Majefty may imploy whom he pleafes in offices Civil and Military, (it mentioned not Ecclefiastick,) and thanks him for his reiterat promifes to fecure our religion; which the Papifts, on the Privy Counfell figneing this letter, meant of their ounes. Duke Hamilton craved it up to fee till the nixt day. This was oppofed; but they allowed him tyme to perufe it prefently, (for he ftormed, that he was not called to the drawing it:) On this, he and his two fones-in-law, Dundonald and Panmuire, retired. Twedale, Zefter, and Drummilziar ware alfo abfent. The Counfellers behind figned it; and to make the abfent as deep, they paffe ane A&, That the reft fhall be required to figne it, and that on the offering it, they ather doe it or refufe. Hamilton, &c., being required, refused; wheron he is reprimanded, *infra pag.* 326.

No. 778,
p. 325. 26 *Februarij* 1687.—The fewars of the Bifhoprick of Dunkeld, and

others liable, fufpends on double poinding, that they ware diftreft for the halfe-year from Whitfonday to Martinmaffe 1686, both by Do&tor Bruce late Bifchop, and by Mr. J. Hamilton prefent Bifchop, who alledged, That Do&tor Bruce was deprived by the King's letter on the 3^d of June laft, long before Michaelmaffe, (tho' ther be no fentence of a Judge yet againft him;) and fo not having ferved till Michaelmaffe, he, by reafon of his incumbency, cannot clame it, by the [13th] A& of Parliament in 1672. Answered, You ware not installed till Martinmaffe, and fo you have no right. Replyed, This halfe-year being vacant in the King's hands, ther is a gift of it yet blank in the name. The Lords (tho' the Chancelor oppofed it all he could,) præferred Bifchop Bruce. But it's intended to get the King's order to fill up Bifchop Hamilton's name in the gift, which will carry it.

Eodem tempore.—Mr. James Hunter 'Treasurer to the Faculty of No. 779, Advocats, having charged Mr. David Douglas Advocat to pay his 500 ^{p. 325.} mks. of his entry money yet refting, coming in by a bill without examination, (for he had payed the other 500 mks.,) he gave in a bill of fufpention to the Lords, pretending the A& for 1000 mks. had never yet tane effect, and was but *ad terrorem*, and he would rather refigne his gounes, having but fmall imployment. The Lords ftopped execution againft him to the 1st of June; and yet, *infra* 8 *Martij*, they draw a præcept on our Treasurer, tho' they ftop the effects.

Eodem tempore.—The Duke of Gordon perfhues Sir Evan Cameron No. 780, of Lochziell for his lands of Mamore in Lochquabor, on his gift of ^{p. 326.} Argile's forfaultor. Thir lands held few of Huntly for 20 mks. yeirly, but ware not confirmed: Argile apprised them from Huntly: He being forfaulted, Huntly is made donator by the King in thir lands, and clames the property. Lochyell alledges, his title could not reach that; feing all that the Marquis of Argile apprised from Huntly was only the fuperiority. The Lords fufained his titles; but Carfe oppofed it who was reporter.

No. 781,
p. 326.

Eodem tempore.—A Sub-Committee of the new Commission for Visitation of Universities met, and drew up thir three Overtures to be presented to the Court, to be past by them in Acts; 1^o That in all their ethick dictats they should instruct the youth in the unlawfulness of defensive armes, and resistance to the King; which seemed to set the curious spirits on a question deserving rather to be buried. 2^{do}. That the Regents in all tyme coming are to be unmarried persons; seeing, by the foundations of our Colledges in tyme of Popery, they ware designed for Churchmen; and so it was a rule and statut then, that they should be unmarried:—But Edinburgh Colledge, erected since the Reformation, hes no such restriction: And *lex* 2 and 11 *C. de Professoribus et Medicis*, extends the priviledges given ther to Professors of liberall sciences, also to their wives and children; *ergo*, they ware allowed to marry. 3^{tio}. That no Regent stay above 8 years in the University. Yet *lege unica C. de Professoribus in urbe Constantinopolitana*, their *docentes comitativam dignitatem meruerunt*, and great dignities are conferred on them who had taught 20 years together. And thir two ware to begin at Michelmas 1688; and it was doubted if it should extend to Primars and Professors. Ther was a bill given in by the Colledge of Edinburgh against thir Overtures, which then put a stop to it.

No. 782,
p. 326.

3 *Martij* 1687.—At Privy Counsell, one Mr. William Houstan is brought in by the souldiers as a Feild-Preacher with Rainy [Renwick;] but, it is said, he discovered himselfe to the Chancellor to be a Benedictine Monk, and shewed his commission; so he was past over in silence.

No. 783,
p. 326.

4 *Martij* 1687.—At Exchequer, ther is a letter from the King giving pensions of 50 lb. sterling the peice to four of the Masse Priests who serve as Chaipains in the Abbey; and Father Dunbar is made the King's Almoner, in place of Mr. John Robertson minister.

8 *Martij* 1687.—The Lords of Session meiting on their oun private busines, they draw a præcept on Mr. James Hunter Treasurer to the Faculty of Advocats, to pay 500 mks. out of their stock to Mr. James

Sutherland, keeper of the Phyfick Garden in Edinburgh. The Phyfitians, Doctor Balfour, &c., procured this, with his brother, Forret, Drumcairne, &c., yet they ftop the Advocat's money, *supra pag. præced. in fine.*

9 *Martij* 1687.—At the Treafury, Sir George Lockhart Prefident, his additionall penfion of 700 lb. fterling is paid. And Madame Broomleye's, for 300 lb. fterling yearly.

10 *Martij* 1687.—At Privy Counfell is red his Majesty's letter, reprooving Duke Hamilton for refufing to fubfcribe the letter, *supra pag.* 324; and putting off his two good-fones, Dundonald and Panmuire, for that; and accepts the Duke's apologie for this tyme. He is keipit in (fay fome) to bear a part of the odium of all that's done. And the King ordained that letter to be prefented, to be figned by all the other abfent Counfellors; and the King explains his former Toleration to the Prefbyterians, that they moft come to his Privy Counfell, and crave it, and firft take the new Oath enjoyned by the Proclamation; which they will not readily doe, and fo this was juft to cut them of; but fee *infra* 11 *Aprilis* 1687.

Item, Ther was a letter, making the Earle of Lithgow Proveft of the Queanfferry.

3^{tho}. Robertfon of Strowan perfhues, &c., for oppreffion.

4^{tho}. One Lyon a Minifter being to be ordained, Hamilton Bifhop of Dunkeld prefented the new Oath to him, and he fcrupling, his ordination was ftopt; and the Archbifhop confulted with the Chancelor, and he ordained, that by all means he fhould take it, and all intrants to office moft take it; and fo this Minifter did fo, and was the 1st in Scotland that took it.

11 and 14 *Martij* 1687.—At Criminall Court, Mr. Robert Buchanan No. 784, of Arnprior Advocat, perfhues John Buchanan of Leny for perjury, for p. 327. fwearing in ane exhibition, that he had not fraudfully put away fome papers, nor ordered the doing of the fame; and yet, by letters under his

hand, prior to his oath, he had desired William Fischer and William Paton, in whose hands they were, to give them up to Mr. Thomas Rig. Alledged, 1^o The doubles of the letters were not given in with the ditty. Answered, Their substance and tenor were ingrossed in the full copie given. The Lords found no necessity of giving them out. 2^{do} Alledged, *Nemo debet lucrari ex suo dolo*; Mr. Robert the pershuar imprisoned Leny; for the tyme of his oath he had the letters in his hand, and yet kept them up, &c. Answered, *Ejlo*, it was so, yet the King's Advocat might insist. 3^{tio} Alledged, The letters produced were not these libelled on, because they did not agree in date. Answered, This was but *vitium scriptoris*. 4^{to} Alledged, He never had these papers, and so could never fraudfully put them away; and they were yet extant, and put in a more responsible hand then they were in before; and so there being no *damnum*, there was no perjury, which is not committed *sine dolo et damno*; and that words *non sunt aucupandæ et captandæ* to infer a crime, but *ea interpretatio sumenda quæ excludit perjurium*. (See Clarus, Capzovius, and Sir G. Mackenzie on the title of Perjury, and Row's case with us there.) The Criminal Lords deserted the dyet, in respect of the informality of the libell anent the date of the letters; for they were not holograph, and their subscription was denied, and so it did not appear they were prior to the oath. The Lords recommended to the parties to agree.

No. 785, 16 Martij 1687.—Anderson younger of Wasterton, is, upon Duff of p. 327. Braico's delation to the Chancellor, imprisoned within the Tolbuith of Edinburgh, for treasonable discourses used by him in the tavern at a glass of wine, by asserting the lawfulness of defensive arms against tyrannical Princes, and impugning the King's absolute power assumed in this late proclamation of Toleration. Immediately ane ditty of treason is raised against him; and his day of compearance is Moonday the 28th of March. He raised ane exculpation on these grounds; That any thing past was but problematick, and only for argument; and the witnesses were in law inhabile; Braico bearing him a mortall hatred, and had appealed him to a duell; (tho' they were now drinking together;) and

inimicitiae capitales does even cast the King's evidences and witnesses in treason, as was found *supra*, 24 *Martij* 1684, in Cefnock's case. 2^{do}. Dumbar, Clerk of Elgin, the other witness, stands infamous by a sentence for, &c. And to show this is not the pannell's judgment, (but they infamed him, and concealed it severall dayes after, which was treason in them,) he was willing to take the new Oath in the King's last proclamation. He is continued to the 4th of May. (See *infra* more of it page 352.)

17 *Martij* 1687.—At Privy Counsell, ther is a letter from the King, that the Garrison of Berwick, and Fitz James his son, now Duke of Berwick, may come over to the Scots borders, and suppress any field Conventicles, or risings ther, the King's Scots forces not lying near that place. And least this should be reputed to be ane inlet to forraign-ers, the Scots forces are allowed to goe sicklike into the English borders on the same occasions.

Eodem tempore.—Captain Scot, in the King's life-guard, having lost his dog in the Colledge of Edinburgh, beats Mr. Gregory Professor of the Mathematicks, by mistake, thinking he had tane his dog. The University in a body having complained to my Lord Levison, Captain, and my Lord Chancellor of this, as ane affront done to them, he was secured and put to crave pardon.

2^{do}. It's reported, my Lord Maitland is made Treasurer-Depute, but without pension or being on the Treasury.

3^{tio}. The Merchands of Edinburgh are persued for breaking the Sumptuary Act in selling filk stuffs dearer then 7 shillings sterling the elne; and the contravention referred to their oath.

26 *Martij* 1687.—*Secundo Matrimonio junctus fui*.

29 *Martij* 1687.—John Campbell of Succo is persued by Cambell of Ardkinglas, for deforcement of a messenger under night. He is affoizied.

2^{do}. Twenty-four prifoners, for conventicles, or being with Argile, or for robbery and theft, are fent away, with the Barbadoes fhip, to the Plantations, with fundry whoores. And fome who difowned the King's authority are remitted to the Criminall Court.

3^{tio}. Ther is a ryot perfhued betuen Bruce of Blairhall, and Hoburn of Menftree.

31 *Martij* 1687.—Ker of Morifton's remiffion paffes, for converfe and intercommoning with one Thomfon, a rebell in Holland, being ane Innkeeper : He paid, as was faid, 2000 lb. fterling for it.

No. 786, 11 *Aprilis* 1687.—The English Toleration of religion is reprinted with
p. 328. us, and his Majefty's new letter is red at Privy Counfell and printed, explaining and inlarging his Indulgence to the Prefbyterians, that they may now preach without the Oath, which he required to be put to them by his former letter of the 10th of March *supra*. This was great inftability of counfell. At laft, [5th] *Julij infra*, the full Toleration comes.

2^{do}. Sir Adam Blair is named to be Proveft of Dumbar, by a letter from the King ; and fome Burgefles to be his Bailzies and Counfellers.

3^{tio}. The Privy Counfell finds the Toune of Edinburgh, and their Tackfmen, have right to exa&t the impofition of 2 pennies upon the pint of ale, not only within the Toune and in Leith, Cannogate, Portfbrugh, &c., but alfo in the Yeardeheads of Leith, who had fufpended on their exemption as lying within the Shire. Yea, they fay, they have made all liable to it who brews within 2 miles about the Toune, which is a great extenfion, more then the words of the Toune's gift will bear. The other Burrows are all getting the like impofitions, tho' fome pretends this is ane impofing of money without authority of Parliament.

No. 787, 14 *Aprilis* 1687.—Ther is a letter red at Privy Counfell from the
p. 328. King, againft Do&tor Gilbert Burnet, ordaining ane libell and indytment of treason to be raifed againft him, for converfing with Argile, and other forfaulted traitors, in London, Holland, &c. Tho' this was the pretence, yet the true quarrell was not fo much his printed Letters of

Travells, as some papers he had sent over to both Houses of Parliament, containing reasons why they should not take away the laws against the Papists, and a privy letter he had writ, bearing, that he had seen at Rome a write signed by all the Popish Princes, and the King of England with the rest, (which certainly is false,) to extirpate the Protestants. Upon this order a dittay was raised, and he cited on 60 dayes to appear, the [11th] day of June nixt. They cannot forfault him in absence, 1^o. Because they can only proceed in absence against perduellion, and rising in arms; and reset and converse is not this crime. 2^{do}. None of the witnesses used against him, viz., Sir John Cochrane, and Waterfide his sone, West and Burne Englishmen, Mr. William Carstairs and Mr. Richard Baxter ministers, are not to be heir then: But they will denunce him fugitive, which will operate the same effect to cut of all Scotsmens conversing with him personally, or communicating with him by letters; which gave great scandall and offence, as tending to harden him. (See *infra* pag. 334, more of his additionall dittay on his letters to Middleton, and his printed answers; see *infra* also pag. 356.)

Eodem tempore.—Sir James Kennedy our Holland's Conservator, by No. 788, the means of Skeen of Halzeards, William Seton of the King's-guard, p. 328. &c., discovers 40 or 50 mean fewars in Cliddisdale, &c., who had harbored some that had been at Bothwell-bridge; and having the promise of their forfaultors, he was to cause summons them before the Criminall Court: But the Duke of Hamilton opposed it.

2^{do}. The Duke of Gordon procures a warrant from the Privy Counsell, to one to set up a freeman Goldsmith within the Towne of Edinburgh, tho' the Deacon and Incorporation of that trade did not consent; which was called by them ane incroaching on their priviledges and fealls of causes.

3^{do}. Pringle of Buckholme younger gives in a complaint against his father, that, being seduced by bad counsell, he was cutting the wholle planting and policy about the house, tho' he was only liferenter; and being ryotous, and having imprisoned the son in Melros Tolbuith, he craved he might be discharged.

4^{to}. A Taylor in the Cannogate going, out of curiosity, to the Popish Chapell of the Abbey, he was so impertinent as to make urine upon the Lady Blairhall and others ther, for which he was apprehended, imprifoned, and examined if he was hounded out by any to doe it to affront them; he declared he was only straitned then, and could not win out.

5^{to}. A Pasquil of verses of prophecy came furth, against the Indulgence, and against the two brether the Chancelor and Secretary, and against Gordon Captain of the Castle, and Maitland, (whom they called all Roman to the nose;) great searck was made to find out the author of them.

No. 789,
p. 328.

4, 5, & 6 *Maij* 1687.—At the Criminall Court, Sir John Dalrymple, his Majestie's Advocat, and Fetterneir, Lord Glafford, his informer, pershues 23 fewars and wodsetters of Glaffoord, &c., for being at Bothuel-bridge, at leift for rendevouzing at that tyme, and refetting rebels. To cut of their defence on the proclamation in Aprill 1683, declaring all free who ware not cited nor attached before the 1st of January 1687, he caused cite them all on the penult of December 1686. Sir George M'Keinzie, late Advocat, being for them, alledged, Rendevouzing without armes was not relevant to infer treason. And the Justices found it so, unles it could be proven, that at the rendevouzing, (which might be for joyning with the King's forces,) they exprest their designe of joyning with thosse at Bothuel-bridge. The King's Advocat complaining of this interlocutor, as too strait in point of relevancy, he moved Castlehill, &c., for the King's intrest, to change it, that even the naked rendevouz without armes (not being convocat by any lawfull authority) was sufficient.

On their exculpation, they proved, The meiting was meerly accidentall; and when their goods [cattle?] ware resting them in the folds, one of them having the Proclamation against the Rebels, read it, and asked them, Whom they would be for? And they all threw up their bonnets, and ounded they would be for the King; and he, in sport, bad them get muskets then, which they did, by cutting of some branches of trees, and so in raillery made a mock-muster. Glaffoord's witneses being adduced,

declared, They had been examined in a præcognition, and threatned to depone against them: And their depositions being red unto them, they declared ther was more written then they had said; for they could not write; and they were promised rewards to abide at it, and threatned with hanging if they refild. This practifing being fo unwarrantable, the Affife (wherof Proveft Curry was Chancelor) affoilzied them. One of them refusing to ounne the King's authority, (on whom the King's Advocate took pains to fave him,) was banisht to the Plantations. Glaffurd was much dasht at this; for, being Popish, he judged himfelfe fo fure, that, in a new fignator of his ounne, he had infert their lands alfo.

12 *Maij* 1687.—At Privy Counfell, the dyet for opening the Mint, which was 4 *Maij*, is prorogued to June, becaufe the materialls ware not all yet ready.

2^{do}. The Heritors of Dalmeny Parifh being cited in anent the repairing of Crawmond-bridge, and another on [Almond?] Water; the Privy Counfell, without their confent, laid on ane impositiion on every paffenger, tho' they fhould paffe only by the Foord; but the Privy Counfell is impowered to doe this by the 16^t A& of Parliament in 1669.

Eodem tempore.—We fee the Confervator's defigne of pannelling fundry, *pag. præced.* Duke Hamilton withftands his præcognition at Privy Counfell, unles he will fubfcribe *in pœnam talionis*, and then the Duke ingages to bring them in, many of them being his ounne tennents, and never quarrelled in the former Circuits; and it would tend to fuch oppreffion as to bring in 500 witneffes. The Privy Counfell refused his præcognition.

Eodem tempore.—The King grants a remiffion to James Stewart Advocat, forfaulted for his acceffion to Argile's Rebellion.

29 *Maij* 1687.—Fell to be Sunday, but was obferved by us in commemoration of the reftitution of Monarchicall Governement then, and, in obedience to the 2 A&s of Parliament, by guns, bon-fyres, bells, and fermons relative to the day. Some faid, It might have been obferved on another day.

SUMMER SESSION.—JUNE 1687.

No. 790,
p. 330.

Primo Junij 1687.—The Lords of Session met, and a new Commission from the King is read, nominating the same Lords, but with this difference, that it not only dispensed with the Test, and all Oaths, except that *de fidei*, but, to make their excuse in breaking the laws stronger, it expressly discharged them to take the Test; to which commission they gave obedience, and re-entered, considering they had taken the Test already, and this could not loose them from the obligation of it; and that the King may in law suspend the laws during his own lifetime. Tho' the Popish designe was to make the Protestants acting thus in public offices as deeply guilty of their transgression of their great idol, the Test, as the Papists who had accepted to act in public stations without it, on the King's dispensation. Then Drumcaine proposed, that the Clerks might enter of new too: To which the Chancellor answered, By any means; so they and the Maisters were of new sworn *de fidei*; which was a surprize, there being no warrant from the King for dispensing with the other Oaths as to them: But they loved not to boggle, and knew the Oath *de fidei* might be required of them each Session, and they would not put themselves in the Register's reverence for new Commissions.

This Session Commission, by a mistake, named Duke Hamilton before Marquis Atholl, Privy Seal. Some talked as if the Advocats places were also to be declared void, and then to be re-admitted without the Test: But some said, this declaring void, (tho' in order to an instant new re-admission,) could not be, Advocats places not being from the King, and being a part of our property, could not be annulled without a fault.

2 Junij 1687.—Mr. Robert Cook and John Inglis Advocats, formerly laid aside for refusing the Test, do now enter, upon it's removeall, without so much as either a dispensation from the King, or application by a bill to the Lords; for the President said to them, they needed not.

Eodem die.—It was expected, at Privy Counsell *post meridiem*, that the new Commission without the Test, should have been also produced and red; but because Duke Hamilton, Atholl, Tuedale, and fundry were absent, it was delayed; and so they continued for a while to act by the old Commission. (See it *infra pag.* 334.) No. 791,
p. 330.

2^{do}. Some of the Presbyterian Ministers give in a bill, craving now up, in respect of the King's Toleration, the bonds which they gave not to preach; a Committee is named by the Chancellor to consider it, and to report what places they craved for meeting-houses, tho' their bill craved none.

9 *Junij* 1687, *post meridiem*.—At Privy Counsell, John Whitford of Milton (see of this *supra pag.* 217,) pershues Sir Daniell Carmichell of Maullsfley for a ryot, because Sir Daniell having obtained a decreit of removing against John from the house of Milnetoune, he presented a bill of suspension, and procured a stop from my Lord Kemnay ordinar for 8^t dayes, till Sir Daniell should see and answer: this is intimat to Sir Daniell; yet he causes the Shireff eject within the dayes of the fift, in contempt of the Lord's authority; which they [had] vindicated against James Johnston wryter in the like case; (see it 7 *Novembris* 1678, MS. E.) Sir Daniell alledged, One Lord could not stop a decreit *in foro*. 2^{do}. The Notar-intimater refused a copie of the bill, and said, he knew not if it was true or false, and so they had reason to think it a forged suspension, as he had formerly alledged his father had forged a lease. Answered, One Lord cannot passe a suspension of such a decreit compeiring, but one may fift for 14 dayes, by Act of Sederunt. And to the 2^d, The intimation was opposed, and what the Nottar said *extra officium* did not prejudge Milton; and tho' he had not tane the Test, (as was alledged,) yet any Shiref in that part could intimat a suspension. The Lords fand the libell relevant, and admittted it to probation; and named a Committee of the Lawyers to examine the witnesses.

2^{do}. The Chancellor tells, the King had called for the Archbishop of St. Andrews, and craves the Privy Counsell's leave for his up going, or rather intimats the King's pleasure to them.

3^{tho}. Mr. David Gregory Mathematick Profeffor, gives in a fcheme or table of all the weights, meafures, and fractions belonging to the Mint, how much money a merchand moft get out effeirand to the bullion he gives in, like a fcale of intereft or annuel-rent. It was printed.

4^{tho}. The King's Solicitors give in a complaint againft the relict of Mr. Alexander Forbes, once Sir William Purveffe's man, to give up all the publiſt papers and other warrands lying befide hir husband. Shee detained them, exſpeſting ſome money for them.

No. 798,
p. 332.

10 *Junij* 1687.—Powry Fotheringhame gives in a bill againft Generall-Major Græme of Claverhouſe, (ſee *infra* more of this, *pag.* 349,) alledging, he had violently ſtopped his poſſeſſion of ſome Affiſe-fiſh due to him by the infeſtments in Brughly Caſtle when the Lord Gray had it, viz., nine fiſh out of every boat, for their liberty of anchoring on the rocks ther in ſtorms, (tho' its *juris naturalis ad litus appellere, Inſtitut. de rerum diviſione*,) and to gather bait, which one infeſt in wair may hinder any to doe on his ſands. (See Skeen *de Verb. ſignific. voce Wair*.) The Lords called in the parties and their proctors, and ordained Powry to condeſcend on deeds of violence: But he was not able, farder, than that Claverhouſe had diſcharged his ounge tennents to pay it, which he might doe; but as cheiff Magiſtrat and Conſtable of Dundee, he allowed the Fiſchers in the mercat to reſuſe him payment. The Lords diſcharged Claveris to ſtop him in his poſſeſſion, ſeing *turbatus et ſpoilatus eſt ante omnia reſtituendus*; but ſand Powry could not bring in the point of right on a bill to be diſcuſſed ſummarly, unleſs Claveris conſented, who was juſt going for London; and ſeing ſome of the fiſchers had ſuſpended, and others advocat, they ordained the Cauſe to be brought in in common forme, on the diſcuſſing of theſſe, or by a declarator.

No. 803,
p. 334.

11 *Junij* 1687.—It was quæred, Seing Advocats are now by the Lord's decreit declared free of annuities, if their relicts now during their viduities ſhould injoy the ſame priviledge and exemption? (See Sir George Mackeinzie's printed Obſerves on the 68^t A& of Parliament, James 5^t, in 1537, page 136; *item*, page 439.)

Eodem die.—Dr. Gilbert Burnet is of new cited upon his additionall indytment, for the letters he wrote to Midleton in May laft, &c., (fee the copies of them in print befide me,) fhewing he had tranflated his alledgeance, and threatning, if they infifted, he would publifh ane Apology which might difpleafe his Majefty and others: this was conftrued treason againft his native originary Prince. (See more, *ſupra* pag. 328.)

13 *Junij* 1687.—At the Criminall Court, on Moonday, a woman is only banifhed for murdering hir ounge child, in regard the probation was not full againft hir.

16 *Junij* 1687.—The Archbifhop of St. Andrews parts for London. No. 806,

2^{do}. The Lords ratify the A& made in favors of the Advocats for p. 334. exa&ting money from the intrants, and allowed them execution againft them; becaufe the Advocats propofed, 1^o. To caufe print the Catalogue of their books. 2^{do}. To build or buy a Library-Houfe with their flock, and not be paying 20 lb. ſterling per annum of rent to Thomas Robertſon's airs, out of our publi& money. 3^{tio}. To erect a Profefſor or two of Law, with a ſalary of 50 lb. ſterling the piece. 4^{to}. They defired thoſe who entred by bills, might at leiſt give ſome eſſay and tryell by a Latin leſſon, as was the cuſtom before the late examinations. The Prefident was againft our A&, and propofed, That all the Advocats who entred by bills without examination, their money might be brought into a box, for the Lords to give in charity, they being their Advocats in a more ſpeciall manner; but it was carried againft him. (See *infra* more, pag. 343, and *ſupra* pag. 325.)

Eodem die, poſt meridiem.—The King's new Commiſſion of Privy Counfell is red, and the Duke of Hamilton being now preſent, (*vide ſupra* pag. 330,) they are all receaved again without the Teſt, only on the Oath *de fidei*. Prince George and the Earle of Sunderland, the Engliſh Secretary, are added, to make a Scots Counfell in England when neidfull.

Item, The King's letters is produced, for the names of thoſe who are

to be on the Commiffion for Plantation of Kirks, which was left blank in the [22nd] A&t of the laft Parliament.

3th. Sir Alexander M'Keinzie, Comifar of Orknay, and fon to the Bifhop therof, perfhues fome ryots againft fundry heritors in Orknay.

4th. Ther is one perfhued for this cheat, that being in company with, &c., he had two Nottars with him, unknowen to the other, who had formed a difpofition of part of his lands, and he taking a fnuft, offered it to the other with his pen; and fo the Nottars deponed they faw him touch the pen; which was a manifft perjury by equivocation; like that Nottar at London, who put the Testament he had writ in the defunct's mouth, when he was agonizing, and then deponed it was the laft thing came out of his lips.

17 *Junij* 1687.—At Exchequer, feverall Merchands of Edinburgh are conveened upon oath, for felling filk ftuffs above 7 fhillings fterling the elne, contrare to the A&t of Privy Counfell. William Cockburn defended, That tho' the ftuffs ware worth 14 fhillings fterling, yet he might fell them for 7 fhillings, becaufe he told the buyer, I can take no more for this; but he made up the price by getting of confent triple value for other ware wheron they laid it. The Prefident ftormed at this as a cheating the mind of the law; he ftill afferted its lawfulness, tho' they ware fworne to doe nothing dire&tly nor indire&tly to elude the A&t. The Chancelor faying, Could he be a good Chriftian that a&ted fo? he foolifhly answered, And a good Catholick too; wherat the Maifer was ordered to fend him to prifon, but he efaped in the croud.

No. 807, *Eodem die*.—Mr. John Eleis and William Lockhart, (*de quo fupra*, p. 335. *pag.* 321,) debate and decided; it being remitted to the Seffion by the Criminall Lords, to determine the nullities of the caption. Eleifton alledged, He was not concerned in the want of the execution of the diligence, and other warrands of the caption; for that was the Clerk's part to keep thofe; *et eflo* it had been null, this could not authorize William Lockhart to deforce meffengers, tho' it was in defence of his mother; for fubmiffion to the King's laws and his apparitors is præferable,

et omnes omnium caritate patria vincit. Yet the Prefident (to bring William Lockhart out of this bad step) inclined only to find such an opposition to be but a ryot, to subje& him to a fyne. This was to shun the falling of his escheat, if it ware found a deforcement. The Lords fand the caption null, unles the execution on the first diligence ware produced, but allowed Eleifton for adminiculating of, to examine, like a proving of the tenor, if, when they copied the caption, they did not see the execution conforme? And when they ware thus put to it, then the lads in the Clerk's Chambers produced a refait of William Lockhart's, wher he had borrowed up some executions of that diligence; which necessarily moft be prefumed to be this a-miffing. This drew William to consent to a fubmiffion.

Eodem die.—One is fet upon the pillory at the Trone, becaufe ther was found befide him a bag full of lead dollars filvered over, without any ftamp or imprefse; fo it was fupposed (prefumed) he intended to caufe ftamp them privily, and then vent them.

18 *Junij* 1687.—The Advocats having found the extra& of the con- No. 809,
tract betuen the Toune of Edinburgh and the Colledge of Juftice in p. 335.
1648, anent their electing of the Humanity Regent in the Colledge of Edinburgh, and his falary, (which was long amiffing,) they crave by a bill, the Lords may tranfume it, and alfo record it in their books of Sederunt for prefervation: Which the Lords granted.

Eodem die.—It was quæred among the Advocats, When in a Charter No. 810,
the reddendo is 100 falmond, or &c., whither this be 5 fcore or 6 fcore? p. 335.
tho' the law fays, *in dubiis quod minimum est et debitori facilius, id sequimur*; yet in fheep, and all beafts and other things, 6 fcore goes to the 100, except only in men, cornes, and horfes.

Eodem tempore.—Mr. Alexander Campbell Advocat, who had joyned with Argile in his Rebellion, gets his peace made, and a fafe condu& to come into Edinburgh to treat for his oune remiffion.

No. 812,
p. 336.

21 *Junij* 1687.—Douglas Bifchop of Dumblain raifed a reduction of a Tack of fome few-dueties and teynds fet by his predeceffor Bifchop Ramfay to one Moir; becaufe, 1^o The tack wants the confent of the Chapter. 2^{do} It's to their manifelt læfion. Answered, 1^o This is no part of the patrimony of the Bifchoprick, but the Abbacy of Dundrennan, annexed to the Chapell Royall, and fo neided no confent. 2^{do} The rentall was truly augmented 200 mks. more then it payed formerly, being now 1200 mks., and releiving him of fundry burdens. The Lords, on Reidfurd's report, before answer to the 1^o reason of reduction, bearing the Tack to be fet without the confent of the Dean and Chapter, ordains the annexation alledged upon to be produced; and, as to the 2^d reason, bearing the Tack to be fet in diminution of the rentall, admits that part of the duply to the perfhuar's probation, that before the expulfion of Bifchops, before 1637, the teynds fet in tack payed a greater rentalled duety, or a greater tack-duety, then the duety of this tack now craved to be reduced.

Eodem die.—Twenty-five prifoners are brought into Edinburgh Tolbuith from Glasgaw, for being at a feild-conventicle near that place; for the King's Toleration difcharged theffe meetings. They alledged, The Minifter and feveralles ware in a houfe, and fome only without doors. *Queritur*, If this be a feild-conventicle?

No. 816,
p. 338.

22 *Junij* 1687, *post meridiem*.—At the Treafury, the Toune of Edinburgh produces a letter of recommendation from the King, anent their getting back their excefce of their Excife and Impofition, which the Duke of Queanberry, when Treafurer, took from them to pay his Sone's troupe with. Sir James Rocheid Clerk brought this down from Court with him.

No. 818,
p. 338.

23 *Junij* 1687, *post meridiem*.—At Privy Counfell, the Earle of Arran obtains a fummarr warrant to put him in poffeffion of the lands of North-Berwick, as a part of Stewart of Coltnesse's forfaulted eftate, wherof he hes the gift; becaufe it was a doom and decreit of Parliament.

Yet ther are præferable rights on it, and particularly one due to the Lords of Seffion.

2^{do}. The probation led by Whitford of Milton againft Sir Daniell Carmichell, (*de quo fupra pag. 331.*) is advifed; and Sir Daniell fyned in 600 mks. for the ryot, and to pay the witneffes expences, and to reftore the pleniffing ejected, and to repoffeffe Milneton in the houle.

3^{tio}. The Earle of Southesk againft Burnet, brother to Leyes, for a ryot in the violent intruding himfelfe into a feat or loft in the Kirk of Fettercairnie, belonging to Southesk, who was alfo patron. Admitted to probation.

24 *Junij* 1687.—At Exchequer, Samuell Drumond of Carlourie's efcheat craved by George Drummond his brother, who was ingadged in fundry cautionries for him; but was laid afide on the oppofition the other creditors made.

25 *Junij* 1687.—Duff of Braco's right on the eftate of Balveny is præferred to Arthur Forbess's, tho' a Papift; for tho' Braco was agent in the caufe, yet it was pendant before the imploying him. The Duke of Gordon hes acquired in Braco's right.

27 *Junij* 1687, Moonday.—The Earle of Balcarhouse and Claverhouse parted for London.

30 *feu ultimo Junij* 1687.—It was quæred amongft the Advocats, No. 824, Seing bills of fufpenfion and relaxation bear 20 mks., to be configned^{p. 341.} for the efcheat goods to be payed to the King's Treafurer and Exchequer; If the Treafury be bound to accept that at the paffing of the fignator of efcheat, without demanding more? We find by their praëtife, they do not follow that ftile. 2^{do}. One who gets ane irredæmable difpofition, gives a letter of reverfion apart; If redemption be not ufed on (by) it within 40 years? *Queritur*, If it prefcribes efpecially wher it is not to doe with a fingular fucceffor to the granter of the reverfion, but with his air? It is certain wher it is incorporat in the body of the

right, ther *ob malam fidem* of the possessor, it never prescribes. 3^{tho}. A reli& is provided to the lifrent of the conquest, which proves all to be moveable debts; *Queritur*, If not being seclused from terce and 3^d, shee may clame a 3^d of thir moveables *provisiōe legis*, and the lifrent of the other 2 parts *provisiōe hominis*? See this in Stair's, 24 *Junij* 1663, Scrymgeor and Murray; and in his 2^d volume of Decisions, 4 *Januarij* 1672, Beaty and Roxbrugh, page 34; and 2 *Februarij* 1677, Holms and Marshall, page 502, wher shee cannot have both, but gets hir option of any one of them.

Eodem tempore. — At Privy Counsell, Rofs of Auchlossan pershues the Earle of Home for a ryot, in dispossessing him out of a wodsett. The civill part is first referred to the Seffion, to be discussed ther.

2^{do}. Mr. Alexander Naper pershues Grame of Gartock for beating him.

No. 826, 2 *Julij* 1687. — In the action pershued by David Lindsay, Secretary
p. 342. Melfort's servant, against Van Solingem and Colmar, the Dutch Printers, and John Coupar and Mr. Charles Lumfdean, their cautioners; Magnus Prince and Captain Colifon, the two Arbiters, having pronounced a decreit-arbitrall in favors of David Lindsey, on this cullor, That the Dutchmen acknowledged before them the truth of the articles of his charge; and it being represented, that they ware strangers, ignorant of the language, and so might easly mistake; and such confessions did not bind, except subscribed, as [24th] *Julij* 1661, was found in Buchanan and Osburn's case; the Lords had ordained the Arbiters to be examined on what evidences they decerned, and what articles ware acknowledged: And the Lords this day having advised their depositions, it was alledged for the Printers, That the decreit-arbitrall differed both from David Lindfaye's count-book, under his oun hand, and from a prior stated count of Captain Collifon's.

The Lords, before sentence, recommends to the Lord Drumcairne to consider the count now produced, which is alledged to be Robert Collifon's hand-write, and to compare the same with the other account that is stated by him and Magnus Prince wheiron the decreit proceeded; and

if he find ther is any contradi&tion or disconformity betuixt them, that he examine him upon the ground of the alteration.

5 *Julij* 1687, Tuefday.—Mr. John Richardfon and Mr. Alexander Crawford, Advocats, who had entred by bills, declining to pay their wholle 1000 mks., the Faculty ordered their gouns to be fequeftrat, and they debarred and kept up [out.] They apply by a bill, and complain to the Lords, who fo far countenance them as to ordaine their gouns to be reftored to them, feing that would break their employments; and feing they had given bond, the Lords allowed to proceed *via ordinaria* againft them by horning; and being charged, they gave in bills of fufpenfion, which ware debate and determined on the 12^t of Jully. Their reafons ware, They ought to be exeimed, 1^o Becaufe feveral in their circumftances had been difpenfed with. 2^{do}. That it was contrare to the nature of a liberall fcience, *prætio nummario dehonestari*, and that was only for mechanicks, and the A& of Sederunt in 1679, in Nairne of Greenzeard's cafe, favored them. Answered, Any difpenfations given ware for fuch as entred prior to the A& of Sederunt 1684, and which abrogated that in 1679. The Prefident inclined ther fhould be no difference in the price for the manner of entry, (for he had fome freinds aiming to enter without examination :) But it was carried againft him, and the letters found orderly proceeded; fo they made payment of their other moyities of 500 mks. Some pretended, they would rather *refutare feudum*, not having gained fo much as Advocats. (See more *supra* pag. 334, and *infra* 351, Kemnaye's fone.)

Eodem die.—The airs of line of Carnok, (*de quo fupra*,) give in a bill againft Sir Thomas Nicolfon of Tillicoutry, and obtain a warrand to tranfmit the charter-kift to the hands of the Clerk of the proces. This was to infpect, if they could find the a& of curatrie ther. Then on the 12^t of Jully, it being propofed that the Lords would advife their proces, in regard the Lords to whom it was recommended could not agree them, the Chancellor produced a letter from the King, fifting that proces till he confidered how far he had intrest therein; for he had procured a gift

of that estate to Drummond of Machony, his brother-in-law, as devolved in the King's hands by ane *ultimus hæres*, by the conception of the minute of the contract of marriage, wher the last termination is the airs male of that Sir Thomas's body, who are now all failed in the last Lord Naper; but it was thought this was no *ultimus hæres*, feing infeftment never followed on that contract.

No. 830,
p. 343.

5 *Julij* 1687.—Ther is a Convention of the Royall Burrows at Edinburgh, wher, 1^o Ther are many greivances from particular Brughs, that they are over-ftented, and their proportion more then their trade or common-good can bear. 2^{do}. A motion is made to refchind their A& made in 1675, at Lauderdale's defire, that none represent them but actuall traffiquing and refidenting Burgeffes. This was to make way to the Gentlemen and others, now the King's Magiftrats; and in the renewing this A&, anent the qualifications of their Commiffioners, they kept out that old claufe of their being of the Reformed Religion; for they had fundry Papifts now fitting amongft them. 3^{tho}. It was designed to figne ane addrefse to the King, thanking him, &c., as the Third Eftate, for his favorable Toleration of all Religions, and promifing their fervice in Parliament: But they meit not in the Convention as the Third Eftate.

No. 831,
p. 343.

Eodem die, post meridiem.—At Privy Counfell, the King's new and ample Indulgence of Toleration and Liberty of Confcience is red, and ordained to be proclaimed, and published. It's much of the ftrain of the Englifh one, but it wants ane indemnity for byganes.

2^{do}. Ther is a letter from the King anent Hopeton (who [was] drowned in his fervice) his Shireffship of West-Louthian, mentioning his father's lofing his life with the King, and recommending to fetle it betuen Stewart of Kettlefton, now turned Popifh, and him; but, with this certification, that tho' the King will not touch property, nor ane heretable Shireffship, yet by his cumulative power and prerogative he will name Charles Stuart of Kettlefton his Depute there, not only for Ecclefiastick deli&ts, but for all: Only the quæftion arifes, Which of them would get

the fynes and obventions, which Kettleston exacted with great injustice and rigor?

6 *Julij* 1687.—The Magistrats of Edinburgh, on a generall outcry and complaint of the extortion of the Markats, convey their Fleschers and Vintners before them, and on their declarations, (not on oath,) finding they had transgressed, they fyned them; wheron they each gave in a bill to the Lords, representing, Wher ther is no [rule] law, ther can be no transgression; and that there is no standart set for the price of viviers; and if they buy dear, they most sell accordingly. The Magistrats gave in an answer by way of bill, shewing, How the Fleschers doe extortion, forstall, and regrates the Mercats, by taking all the parks and inclosures about Edinburgh, so that they scarce suffer any to furnish but themselves; that it's nottor they buy beasts as cheap as ever; that they cheat us by blowing their meat, and render it unwholesome, to make it seem fat; they make the Act of Parliament in 1681, of selling by weight impracticable, by their trick of casting in bad pieces, and bones not belonging to the piece bought: The Vintners doe not observe the printed prices and table of wild-foull in buying them from the Poultrymen, but gives what they crave, and so exacts triple again; and hes them so bound up, that till they be served, the Burgeses and privat families can get nothing; they buy prohibit bread, nather of weight nor fyneness conforme to the standart, and gets the dozen for 8 pence, and sells them again for 12 pence; and in sugar, they take at the rate of 24 pence for the lb., and it stands them but 8 pence the lb.; and yet they make up their unces so small, as they lose nothing of their 16 unces; and even so in their measure of tobacco, &c., and if the Lords liberat them of their fynes, the Magistrats will notice them no more; and the fynes come not to their use, but to the poor's. And the Privy Counsell are aiming to casse the Deaconry of the Fleschers as a monopoly, and even so the Baxters: But the Trades most have their 14 then made up to them *aliunde*.

It was referred to Carle; and he having reported it on the 29th of Jully, the Lords refused the Fleschers and Vintners bills, craving back

their fynes for their extortion in their prices; and remitted them back to the Magiftrats of Edinburgh, whoſſe procedor they approved.

No. 838,
p. 345.

9 *Julij* 1687.—The King's Solicitors having raifed a fummons of adjudication againſt Brody of Lethen for 60,000 mks. of fyne, for his Ladie's conventicles, &c.; and it being given out to Mr. James Falconer to fee for him, on the 7^t day after, his 2 men are imprifoned for refuſing to give it back; and it being returned, and immediatly called, it was alledged, It had not the priviledge of the King's cauſes of ſummar diſcuſſing, but was gifted in my Lord Preſton's name, for the uſe of the two Popiſh Colledges of Doway and Paris: This was repelled alſo, becauſe the gift was not paſt the Sealls. Then he offered land to the value; this was alſo refuſed, becauſe it was imprifoned with liferents. This adjudication being but for a fyne, heſ but a reverſion of one year, by the [26th] A& of Parliament in 1685. This was *cauſa religionis* that diſpenſed with all this precipitation.

No. 839,
p. 345.

11 *Julij* 1687, Moonday.—At the Criminall Court, the King by a letter nominats my Lord Drumcairnie to ſupply Pitmedden's vacant place there, now laid aſide 14 moneths agoe. Tarbet was ſeiking it for Balcaſky his ſon-in-law, and Balcarras for Lochore, which kept it ſo long unfilled.

No. 842,
p. 346.

12 *Julij* 1687, *poſt meridiem*.—At Privy Counſell, a Chapman perſhues Carmichell of Potiſhaw, Shiref-Depute of Bathgate, for robbing him of his horſe and cream, under the pretence that he was a phanatick and intelligencer; and becauſe the weemen reſcued him, he offered violence and immodest things to them.

2^{do}. Gilbert Story maltman in Leith, perſhues Cornelius Neilſon bailzie ther, for wrongous imprifonment of him. He is aſſoiled.

3^{tho}. Ther is a letter red from the King, bearing, That the Abbey-Church was the Chapell belonging to his Palace of Halirudhouſe, and that the Knights of the noble Order of the Thriftle or St. Andrew, which he had now erected, could not meit in St. Andrew's Church,

(that being demolished in the Rebellion, as they called our Reformation,) and so this Church was necessary for them to have; and the Provost of Edinburgh was ordained to see the keys of it given them. After a long silence and pause, the Archbishop of Glasgow told it was a menfall and patrimonial Church of the Bishoprick of Edinburgh: And tho' he was now translated, and the See was vacant, yet it belonged not to the Provost to deliver the keys. This was understood, that he was seeking the complement to be employed himselfe, to keep some possession in Edinburgh, wherof he was seeking to be Commendator. However it was adjusted, that the keys should be immediately delivered to the Chancellor himselfe; and the [Inhabitants of the] Canogate, (whose parochial Church it was not of old before the Reformation, but belonged to the Convent ther,) were ordained to goe to the Lady Yester's Church; and the French Minister and Congregation were put out of it to the Hy-School, or Common-Hall; and allowed all to remove their desks, seats, and pews, out of the Abbey Church if they pleased. So this is the first Protestant Church tane away from us.

13 *Julij* 1687, *post meridiem*.—At the Commission for Plantation of No. 843, Kirks now fit doune, (their names from the King being now printed :) p. 347.

1^o Mr. James Elphinston Clerk to it, sells his place, as also his office as Agent for the Burrows, to Mr. John Buchan, late Regent at Aberdeen, and now ane Advocate, for 4000 m^{ks}. to himselfe, and 1000 m^{ks}. to Tarbet Clerk-Register; and Mr. James agrees with Mr. John Wisheart one of the Comissars of Edinburgh, with the Archbishop of St. Andrews's consent, for the reversion of his place, and sits with him Comissar *per vices*.

2^{do}. The Earle of Haddington's Tutors pershues a reduction against Mr. Walter Rig now Minister at Athelstanefoord, of a decreit obtained by his predecessor of augmentation of his stipend in 1649 or 50, in regard Mr. William Carmichell, the last Minister, consented in 1674 to take the cure, but to exact no stipend out of these lands, because they payed already to the Minister of Haddington. The Lords of the Commission fand, that [his] consent was but personall, and could not prejudice the Church nor the successors; and therfor decerned for the

augmentation. (See my Collection out of the Records of the said Comission Court, at the 19th of Februar 1662, betuixt thesse parties, it's numero 14.)

No. 845, 14 Julij 1687, *post meridiem*.—At Privy Counsell, the Heritors and p. 347. possessors of the salmond-fischings upon the river of Don, beside Aberdeen, pershue the Earle of Kintore; that tho' by a formar decreet of Privy Counsell, *supra pag.* [78,] 1686, [1684,] they were fyned for breaking the Acts of Parliament anent their cruives and fisching, yet Kintore and they had entred into a contract, by which he permitted them to violate thesse Acts, they paying him so many barrells of salmond yearly; and this being complained of by other heritors prejudged, the Privy Counsell fand this ane unwarrantable contract, and annulled it, and fyned them in 500 mks.: But the parties who ware bound craved to be free of the byganes of thesse barrells of salmond, (which was like black-maill,) and some of them craved a share of the fyne: But *nemo debet lucrari per suam culpam*.

No. 847 15 Julij 1687.—At Exchequer, one feiking a tutory as nearest agnat, p. 348. it was objected, You offered to renunce and not accept the office if they would give you 200 mks. This was thought a corruption, but ther was greater fear of hazard and malversation from the offerers of the money if they came to be tutors. See Durie [Muschat contra Dog,] 1639.

No. 851, 19 Julij 1687, *post meridiem*.—At Privy Counsell, Maxwell of Tinwell p. 348. pershues Maxwell of Garnfalloch for breaking up his cabinets, and taking away his papers and plenishing. Answered, He had his written warrand. Replyed, He was interdyted, and they did not consent. This it feims, should assoilzie from a warrand; yet it was committed.

2^{do}. My Lord Bargeny is pershued by one Paterfon, a tennent, for poinding him after he had intimat to him a suspension; which was a most unwarrantable breach of the peace.

3^{tio}. The Lady Cardrosse pershues hir stepmother, Elizabeth Dickison,

relict of Sir James Stewart of Kirkhill, hir father, for ane aliment out of hir joynture. Alledged, It was very moderat, being only 1200 mks.; and if appearand airs dilapidate ther estates, lifrenters ought not to maintain them. Answered, Shee being of a mean quality, 1200 mks. was too much for hir. The Lords modified the halfe of it to my Lady. It ware good the Parliament restrained this exorbitant power of the Privy Counsell's incroatching on relicts joyntures, wher shee is not the appearand air's mother.

4^{to}. The Privy Counsell allows the landwart Fleschers to bring in their meat to Edinburgh all the dayes of the week, and that the Toune appoint them also slaughte-houses at the North-Loch fyde; and discharges the Toune, or Edinburgh Fleschers, to exact any imposition from them. This, on the matter dissolves the Fleschers of Edinburgh's Seall of Cause from being a Deaconry, or Corporation, to monopolize our vivers. And some think the Baxter's [seall] should be also called and annulled; and all permitted to bring in bread every day; as the Maltmen are discharged to incorporat in a Deaconry. See Acts 121 and 122, [Parliament] 1540.

20 *Julij* 1687.—The Earle of Arran finding his rents of North-Berwick arreifted by James Inglis of Crawmond, he procures from the President a warrand to the Clerk of the Bills for letters of lousing the arreiftment: And tho' the President prest him to give but one of his servants, cautioners, he refused, saying, He would find caution to no subject. No. 854,
p. 349.

2^{do}. Somervell of Drum's son, agrees with him for his right of Coltnesse's forfaultor, in so far as it might extend to Gutters [Goodtrees,] and gave him 200 lb. sterling for it; tho' Coltnesse's mother be infest in it.

Arran parts this day for London.

21 *Julij* 1687.—Fotheringhame of Powrye's case against Northesk, Panmure, and Claverhouse, is reported by Edmiston. (See of it *supra* pag. 332.) No. 855,
p. 349. And the Lords finds his charter, *cum piscibus*, gives him a sufficient right and title to prescribe the Affise-duety of nine fishes out of every boat that passed by Brughly Castle, once belonging to the Lord

Gray, for their ankoring on the rock, and gathering bait on his sands, if so be, he had possessed 40 years by vertue of that title: Tho' it was alledged, 1^o The clause, *cum piscibus*, was no more then *cum piscationibus*, a meer liberty to fish; but if it had meant a duety out of other folk's boats, it would have been so conceived. 2^{do}. This cannot introduce a servitude upon my lands or tennents, not being exacted on the land, but at sea, and so the master's knowledge and *patientia*, to induce præscription, cannot be heir presumed. As for Claveris, he was 17 years of this 40 a minor, and so they most prove 40 years before that; likeas there were other interruptions. Powry was ordained to produce his charters.

No. 857, 21 Julij 1687, *post meridiem*.—At Privy Counsell, the witnesses led before the Committee against the Johnstons of Earshag, (*de quo supra* pag. 319,) doe insinuat that they believe they set fyre to their oun house themselves; which tends to vindicat Queansberry from the pershuit.

2^{do}. Thomas Steill gives in a Bill against Thomas Weir, bearing, that Doctor Anderson left ane usefull medecall pill to his two daughters; and that Margaret gave the secret of composing it to one Mistres Haisty, who, since hir death, hath revealed it to Steill; and yet Thomas Weir, under pretence that he got the mysterie of it, and ane assignation to it from Catharin, the other sister, and that none else had it, has, *celata veritate* by obreption, obtained a gift and signator from his Majesty, that none else sell it but he, under the pain of 1000 mks.; and seing the feild of liberall sciences is open to all, *et vivitur ingenio*, it's against publick good to monopolize such things, and to prohibit others; and therfor that he may be allowed to vend them. The Lords of Privy Counsell recommended to the Colledge of Physitians to consider the petition, and the right of parties, and to report, for *credendum est artifici in sua arte*. But if the Physitians should require its resait, to see its composition if wholsom, this would divulge the secret, and prejudice the parties of their intended benefit. And to ascertain the Lords, that Steill had a true and not a false manner of composing them, he offered Mistres Haistie's oath, &c.

3^{tio}. But on the 2^d of August, it being reconsidered, Thomas Weir's gift

from the King was past, giving him the monopole and sole privilege of felling Anderfon's pills; and there was printed letters of publication of his right issued out, discharging all others. This was done on Melfort's letter, who had got money from Weir for it. [*Vide* 1st December 1687.]

4^{to} John Weir of Newton is pershued for extortion, oppression, and falsehood, that being Sub-collector of the taxation under Duke Hamilton, he took three or four dollars from parties, or the like, to take back his charge of horning, or to connive at their suspending: And having acknowledged that others did it as well as he, he was fyned in 500 mks., and declared incapable of all public trust. But Cato says, *Fures minores suspenduntur, majores in purpura et oestro vivunt*: The great flees break the cobweb of penal laws, as Anacharsis observed, when the small ones are catch't. *Dat veniam corvis, vexat Censura columbas*; spoke of Marius and Sylla's passing delinquents for money, when they were Cenfors; but as true of our tymes, as of theirs.

22 *Julij* 1687.—My Lord Kemnay gives in a bill (*vide supra* Richard-^{No. 859,}son's case, *pag.* 343) for his son, from whom the Advocats examiners^{p. 351.} had exacted 500 mks. before his first examination, and sent him away till he brought it, that the same might be restored, seeing it was time enough for him to pay his entry money at his admission. The Lords, without hearing the Advocats, granted the desire of this bill. The privat examiners stormed, and offered to repone him if he would restore his past bill, and *re integra* be re-examined; in which case they resolved to have cast him as insufficient.

23 *Julij* 1687.—Auchinleck of Balmanno's proces against Sir Thomas^{No. 864,} Murray of Glendoick was advised, whither the Commoners betuen them^{p. 352.} should be examined as to the terms of the bargain of sale and price, as was done in the Dutcheffe of Lauderdale's case against the Earle of Lauderdale. The Lords were equally divided on it, and the Chancellor superceeded to give his vote, but sent for the Commoners, and tryed what they could say.

No. 865, 26 *Julij* 1687.—Anderfon of Westerton (see it *supra* pag. 327) having
p. 352. come in the King's will for his treasonable expressions, is forfeited, his
armes riven, &c.

27 *Julij* 1687.—This day the Chancellor, Duke of Gordon, and Marquis of Atholl, on a letter from the King, are installed by Duke Hamilton as Knights of St. Androis, and the Thriftle and Rue, with the Sword of State, in the Privy Counsell Chamber, and the ribban and badge put about them. They most be twelve beside the Sovereigne. (See the Rules of this Order in Dr. Avity's [Pierre Davity, Description Generale du] Monde, in his generall Præcognita.) They gave their oaths on the Popish Miffal: which the Marquis of Atholl stumbled a while to doe.

No. 868, *Eodem die*.—John Inglis Advocat having caused print the proces
p. 353. betuixt him and Robert Malloch, (which see *apud me*,) wherein he brands him as a cheat and falsary; Robert gives in a bill to the Lords, complaining of him for the abuse and defamation. The Lords called for John Inglis to give him a reprimande, and cause him to crave Malloch pardon; and, in regard he absented himselfe, they ordained him to be apprehended and imprisoned, and deprived him of his office as ane Advocat.

No. 875, 28 *Julij* 1687.—Mr. Charles Home of Ayton, as having right from
p. 354. Sir William Purves, his father-in-law, to that debt owing by the Earle of Marshall, (*de quo supra* pag. 21, *et seqq.*) insists against Mr. James Keith Wryter, and it is debate this day.

No. 877, 28 *Julij* 1687, *post meridiem*.—At Privy Counsell, William Forester
p. 355. Writer to the Signet, pershues Stuart of Rossyth for a ryot committed in beating him. He had gotten of Kinninmont and Roscoby, (who had deforced the Messenger at the same tyme,) 1000 lb. Scots of composition, to desert the criminall processe of deforcement he had raised against them; and this was to cause thir two lairds likewayes agree with him.

2 *Augusti* 1687.—Lesly of Bochoyn is made a Privy Counfeller; he is a Papift. No. 878,
p. 355.

2^{do}. James Muir, Prestongrange's fervant, pershues Sir John Ramfay of Whythill, Shiref-depute of East-Lothian, for oppreffion, in holding a pretended Court at Cockeny without Clerk or Fiscall, fyning him in 100 dollars, far above his jurisdiction, detaining him in *privato carcere* in Seton, and putting him in the irons, and thummikins on his hands, tho' torture belongs only to the Privy Counfell. Answered, That Sir John had also a reconvention against him, for tearing of papers and discharges he had given, and for beating, bleeding, and deforcing the Shireff officers, (which ware heanous crimes,) and proven to him, not only as a Justice of Peace, but also as Shireff; that he might hold a Court *pro re nata* within any part of the Shirefdome, his territory, as weill as in Hadington, and might choise a Clerk and Phiscall for that particular a&t; and he was not tyed to 50 lb. Scots of fyne; and the Shireff might use any Baron's prifon, and much more the Shireff-principall's oun prifon; and that he was so furious he behooved to be keeped in irons like a mad-man, and having broken them, the thumbikins ware put upon him, not to torture him, but to secure him from fleeing; yet a guard of men could have done that. The Privy Counfell admitted both the libells to probation; and at the advising, were clear that a Shireff-depute, nor no inferior Judge, could use torture; that Sir John had exceeded his power: yet, not to discouradge the Governement, both were called in, and Muir rebuked for his violence, and Sir John desired to exerce his power with greater moderation, and to restore the fyne. For Winton's friend's sake in the Privy Counfell, Sir John escaped thus easily, tho' Lawyers are clear that malefactors tane in *flagranti crimine* may, for 24 howers, be secured in *privato carcere*, providing it be done *animo consignandi competenti judici*, or to a publi&t prifon.

Eodem die.—Mistris Anne Gilmor raised letters before the Privy Counfell against Catharen Cockburne, wife to Henry Sinclar Wryter, for defaming hir outrageously in hir honor and chastity: The other was also raising letters of recrimination against Mistris Anne, for reherfing No. 879,
p. 355.

vile and opprobrious verses against hir. This was agreed before there was any public hearing in it.

No. 880,
p. 355.

9 *Augusti seu sextilis* 1687.—At Privy Counsell, the Printers and Bookfellers of Edinburgh are called upon oath to declare what books they had, [during] this twelve moneths past, imported, printed, or sold, and to produce their catalogues; because the Chancellor alledged they had sold fundry scandalous and seditious pamphlets; meaning, it's like, Dr. Gilbert Burnet's Travells, and the books from England against Poperie. And fundry of them were imprisoned and fined; and all of them discharged to print or vend any without a special licence and approbation from the Chancellor, and [or] the Archbishop of Glasgow. But James Watson, the Popish Printer in the Abbey, is excepted from this A&; so he and his son may print or sell what they please against the Protestants.

Eodem die.—Because the Presbyterian Ministers did not attend the Chancellor as he expected, therefore they are discharged to make use of any Chappells or Halls; on this pretence, that the Trades could not sell their common houses, they being the King's, and that they should only use other private houses, and settle their Meeting-houses and their Ministers presently, and give in their names, as the A& of Toleration appoints: But the designe of all this was only to cause them come to the Chancellor, and get licence for these Meeting-houses, which he presently granted.

Eodem tempore.—James Cameron, once Clerk to the Tolbuith of Edinburgh, murders himselfe at Innerness.

No. 881,
p. 356.

16 *Augusti* 1687.—At Privy Counsell, the Master of Balmerino is admitted a Privy Counsellor, on a letter from the King, procured by his father-in-law, the Archbishop of St. Andrews.

2^{do}. The King's Answer to the Presbyterians' addresse to him comes done, but is not printed; only their addresse of thanks to him for their liberty of Toleration is reprinted heir.

3^{to}. The Mint-Houſe is eſtabliſhed and opened. Whatever plate or bullion is given in by Merchands or others, to be melted or coyned, they give out weight for weight; ſo the ingiver getting in coyned peices, paſſing by its extrinſick current rate for more then its intrinſick value, he gains one per cent. by it; but part of it loſing in the fyre, (notwithſtanding all ther heads,) for which they retain nothing, the Mint will be loſers, unleſſe the King's Exchequer, or the country, make up this loſe to them. James Cockburn, Goldſmith, is depute in the Mint to Sir William Sharp, Maſter.

4^{to}. No ſignators of patronages are to paſs in Exchequer, till they be ſeen and allowed by the King: This is to ſtop all patronages, and to draw them back to the Crown. (See the 176^t A&t of Parliament, in 1593, and the A&t of Exceptions I have from it.)

Eodem tempore.—A ſojor called Stevinſon is condemned for killing another; and Gordon of Earleſton is recommended for a remiſſion to the King; and Poſfills, who killed M'Farlan, craving the ſame favor, it was refuſed to him by Sir Hew Wallace's power with Melfort, his wife being a M'Farlan.

Item, The Merchands of Edinburgh are perſhued for importing prohibited wairs, and ſome of them fyned.

29 *Auguſti* 1687.—Do&tor Gilbert Burnet's dyet, (*de quo ſupra*, pag. No. 882, 328 and 334,) being continued to this day, he is denounced fugitive for^{p. 356.} not appearing to anſwer to his libell of treaſonable converſe, and his letters to Midleton.

Eodem tempore.—The Dutcheſſe of Lauderdale perſhues the Earle of No. 883, Lauderdale before the Privy Counſell, for a ryot, in diſpoſſeſſing hir, and taking away the keyes of Lauder Caſtle, wherof ſhee was liferentrix by take [tack]. Anſwered, By ane inventar of papers produced by hirſelfe on oath, on Yeſter's exhibition *ad deliberandum* againſt hir, it appears ſhee had renounced the liferent of this houſe, and he had a right from the creditors.

Primo Septembris 1687.—Sir John Cochrane and James Stewart come from London to Edinburgh, to negotiat with the Presbyterians anent taking away the Pænall Laws both against themselves and the Papists; which the King expected from them in gratitude. Some of them were for it, and others were willing rather to lose their Indulgence then buy it at that price.

2^{do}. Queanberry goes up under the pretence to clear his accounts; but ther was more in it, for Duke Hamilton followed.

No. 884,
p. 356.

9 *Septembris* 1687.—The Toune Counsell of Edinburgh place a Popish Quirifter in Heriot's Hospitall, to teach the children musick, contrare to Heriot's fundation. The Univerfity of Oxford a&ts otherwayes.

2^{do}. The same Toune Counsell give Sir James Rocheid, their Clerk, 1000 lb. sterling for his pains and service done in the Toune's concerns at London, besides his charges ther, which are also to be reimbursed him, on the pretence he was a loser when he was put out of his place.

3^{tio}. They refuse the Chirurgians three out of their list of fix, tho' by a former A&t, ratified by a Decreit of Declarator obtained theron before the Lords, *supra* pag. 54, in Februar 1684, they ware bound to doe it; and so gave them out other three, the fix being such as came not to Church.

16 *Septembris* 1687.—Ther is a letter from Melfort, by the King's order, red at Privy Counsell, stopping all the elections of Magistrats of Royall Burrows in Scotland, till he declare his farder pleasure by a nomination, except in Rothesay and Perth; to which last he named Sir Patrick Threipland.

5 *Octobris* 1687.—At the Committee of Privy Counsell, ther is 100 lb. sterling put on Rainy [Renwick] the feild-preacher's head, to any who shall take him.

Item, Ane A&t made against feild-conventicles, and that the Presbyterian house-meetings obey the conditions of the King's Indulgence, preach nothing against the Governement, and give up their Preachers names, with the tyme and place, to some Magistrat or Justice of Peace, &c.

2^{do}. Two fojors are shot to death, by military discipline, for robbing some houses at the head of the Cannogate.

18 *Octobris* 1687.—There is a proclamation of Privy Counsell against Renny [Renwick], Sheills, and Houston, three hill-Preachers, discharging still all feild-conventicles, and offering 100 lb. sterling reward to any who shall apprehend them. (See *infra* more, pag. 388.)

Eodem tempore.—The Presbyterian Ministers have a kind of Generall No. 885,
meiting, or Assembly, at Edinburgh, wher they lay doune rules for p. 357.
providing Ministers to preach in their meeting-houses; and recaved in letters from fundry places, craving Ministers to be sent them. Mr. James Kirton being designed by them to be one of the Ministers that was to serve at Edinburgh, and he fynding it a great toyl to one of his years to lecture and preache twise every Sunday, and once every week, and having an invitation to Newbotle, declined it; and they resolving to use authority, he protested against their power, they not being a judicatory, and that his former parishioners of Merton ware not cited and acquainted. This made some animosity amongst them. Mr. John Hardy Doctor of Medicine, and one of their Preachers, in a sermon used this expreffion, or the like, That they thanked his Majesty for his Toleration; but if they behooved to take away the laws against Popery, it ware better to want it: And any that consented to it, the curse mentioned [by] Zachery would enter their houses like a flying roll, and eat the stones and timber. Tarbet proposed to the Privy Counsell, he may be called, and censured for preaching sedition, and raising up jealousies in the people's minds, and opposing the King's designs. (See more of this *infra* 3 *Novembris*.)

The Proveft of Edinburgh causes imprifon James Traill, brother-in-law to James Stewart Advocat, for affirming in company, That the Proveft had vented it as news, that Melfort was accused by Arran of treason, and was put in the Tower; and he preffing he might give his author, pretended he did not remember: But, after some sharp words betuen the Proveft and James Stuart, he was liberat.

No. 886,
p. 357.

Eodem tempore.—Mr. Alexander Paterfon being heritor of some stone-lands within the Parliament-clofe, was converting them into ane Exchange for Chop-keipers; Thomas Robertfon's fones opposed it, as being prejudiciall to the Royall Exchange built by their father, and for whose encouradgement it was certainly designed, that none should have the benefit of one but he. Answered, This were against the nature of dominion, to hinder a man from improving his oune property as he pleased; which is never repute to be *in æmulationem vicini*. Replied, In many cafes property *ob bonum publicum* is restrained; and Mr. Alexander himfelfe got the other landlords in the Parliament-clofe condemned not to build before his fabrick *ne deformetur aspectus*. The Toune Counfell of Edinburgh found they could not impede him, providing he took none into his of thoffe who had erected Creams in Robifon's Exchange. (See Sir G. Mackenzie's 1st pleading, the Fifchers upon Tueid against Hayning.)

WINTER SESSION.—NOVEMBER 1687.

Primo Novembris 1687, Tuesday.—The Seffion fat doune.

No. 887,
p. 357.

3 *Novembris* 1687.—At Privy Counfell, a letter from the King is red against Mr. John Hardy Doct^r of Medicine, now one of the Presbyterian Minifters, for faying in a Sermon, That any who would take away the laws against Popery, Zacharie's flying roll of curses would enter into his houle, and confume the timber and ftone. (See of him *supra* this pag.) He was dealt with to retract; and finding him obftinat, it was not judged fit to make yet ane example on the Presbyterians, till they faw what they would doe; therfor he was continued, with a reprimand. But a new letter from the King is red on the 22^d of November 1687, ordaining him to be pannelled criminally before the Juftices, for his preaching; wheron he is imprifoned, (for he would not flee, tho' he had leifure and advertifhment;) and a libell is raifed against him on the 134^t A& Parliament 8^t of James 6^t in 1584, and A& 10^t, 1585; and on the Privy Counfell's Proclamation, *supra* 16 *Septembris* 1686,

againſt leiſing-makers, (ordained to be red by Miniſters quarterly,) and on the quality of the King's late Toleration and Indulgence to the Preſbyterians, that they ſhould preach nothing that might alienat the hearts of the peeple from the King or his Governement, nor medle with his proceedings. And, on the 1st of December 1687, the King's Advocat propoſed to the Privy Counſell anent Dr. Hardy, that, ere he ſhould give him ane indytment, he might take a præcognition of the witneſſes who heard him ſay the words. This was granted, tho' neidleſs; for at firſt Dr. Hardy boldly ouned what he had ſaid, (till he was intreated by his brethren to put them to a proof,) and it is the Preſbyterian principle, that Idolatry, even under the Goſpell, is puniſhable by death, and that Popery is ſuch; and ſo they can never think but the laws againſt Popery are both juſt, lawfull, and neceſſary. 2^{do}. He craved that Sir George M'Keinzie might be alſo adjoyned to him as perſhuar in the proces, for he foreſaw ſome hazard to pannell a man for ouning the ſtanding laws, and that it might be called at another tyme treaſon to impugne the authority of the Three Eſtates, and the legiſlative power; and wiſht to hook Sir George Mackeinzie in with him. But the Preſident oppoſing it, it was not granted. Then, on the 5^t of December, being Moonday, at the Criminall Court, the witneſſes ware examined on the præcognition, who did not prove the expreſſions libelled, but others: Severall deponed, they did not hear him, he preached ſo low. He himſelfe in the generall ſaid, he conceived he had preached nothing but what was aggreable to the Word of God, laws of the land, and his duety to the King; for he had ſuffered for the King.

Then on the 13^t of Februar 1688, being Moonday, at the Criminall Court, he is pannelled, and they inſiſt againſt him for theſſe ſeditious expreſſions againſt the King's deſigne of having the Pænall Laws reſchinded, viz., That he was ſorry others (meaning the Papiſts) enjoyed the King's Liberty and Indulgence, as weell as the Preſbyterians, and that no Preſbyterian in his principles would approve [allow] of it. Alledged, On the 2^d A& of Parliament in 1662, wher ſpeaking againſt the King's Supremacy in Church matters, (and who reflects more on this then the Popiſh Priests, *Quis tulerit Gracchos de ſeditione*

quærentes;) is not treason, but only arbitrarily punishable. 2^{do}. The expressions had no sedition in them, seeing he might regrave, that Socinians and others had liberty to vent their doctrine against Christ's Deity, &c. The Criminall Lords took the courage to find the expressions libelled not relevant to infer sedition; and therfor affoizied him from the crimes libelled, and liberat him from prison; tho' he had freedome all the day-tyme before to come abroad. This displeased the Papists as much as it satisfiied the Protestants.

3 *Novembris* 1687.—At Privy Counsell, ther is another letter from the King, declaring, It was not his intention thosse Presbyterian Ministers who had been intercommoned for treason should teach, till they ware relaxed from the horne, and obtain remissions; and ordained them to doe it betuixt and a set tyme. This was invented for Melfort, the Secretarie's profit.

4 *Novembris* 1687.—The Wryters presenting themselves before the Lords to receive their injunctions, as use is, the Chancelor reproved them for suffering lybells to be written in their Chambers. Bannockburn answered, Lybells was their employment. Bot he knew weell enough that the Chancelor meant not of fummonds, but of pasquils.

5 *Novembris* 1687.—It was feriat with the Lords, because of the Gunpowder-Plot; tho' it was debate amongst them the day preceeding, whither they should fitt, yea or not; and some ware for fitting, but the President opposed it. (*Vide supra* the Observes on this day.) The Mair and Aldermen of London, after a debate and stated vote in Counsell, did this year observe it, tho' they ware of the King's oun in-putting.

No. 888, *Eodem tempore*.—Ther was ane Act of the Toune Counsell of Edin-
p. 358. *

* It may be mentioned, that from page 358 to the end of Manuscript E, the hand-writing is different, being probably that of Fountainhall's Clerk.

burgh, giving Alexander Hay, Wright, the gift and monopolie of all the chaires and sedans to hyre for the use of any who would call for them, at 7 pence the hour, which was much easier and cheaper than ane coach.

6 *Novembris* 1687, Being Sunday.—At the Poppish Chapell in the Abbay, ane paper wes privily posted up, with 5 Quæries, such as 1^o If the Popish custom of serving God in ane unknowen tongue was not alse contrare to Paul's doctrine, 1 Corinthians cap. 14, as adultery is to the 7th Command? 2^{do}. If ane Preist, tho' dumb, may not mumble the Messe within his teeth, seing they doe not suffer the peeple to hear it at no tyme? &c., as they are to be seen in Mr. James Gordon of Banchorie's 22 printed Quæries. Witherington the Jesuit having gotten them, the Priest resolved not to answer them in wryte, but only *viva voce*, which he did in his afternoon Sermon, and alledged, That Paull was so far from condemning the use of strange tongues, that he recommended them; and that no Preist could make Christ's body without uttering the words of consecration, which one dumb could not doe.

7 *Novembris* 1687, Munday.—At Criminall Court, one Bold, who had been Precentor or Reader to Renny in his feild-conventicles, is pannelled; and tho' he revoked his confession he had emitted at the Privy Counsell, yet they lead witnesss against him, and prove that he disowned before them the King's authority, and refused to call Bothuell-bridge ane Rebellion; wheron he was condemned to be hanged, but superceeded for a moneth, till he might get ane remission. For the 10^t A& in 1685, sustaining thesse confessions tho' not renewed to the Affise, is bot temporary till the next Session of Parliament. But he now ouned the King, and recanted all.

8 *Novembris* 1687.—John Hay under-Clerk resignes his place in favors of Gavin Hamilton wryter, who gives 4500 mks. for it, wherof John Hay getts 2000 mks., and the rest goes to the upper-Clerks; Mr. David Pitcairn was also bidding for it.

No. 889,
p. 359. *Eodem tempore.*—Mr. Gilbert Elliot, who was forfaulted for comeing in with Argile, having obtained the King's remission, he applyed to be admitted ane Advocat, and being recommended to the Privat Examinators, they stumpled to meet with him till he shewed first his remission, least it might infer converse against them. See *infra* anent his being rejected, *pag.* [.]

No. 891,
p. 360. 9 *Novembris* 1687.—Ther is a letter from Melfort, by the King's order, to the Chancelor his brother, to meet on the Duke of Queansberry's compts, and bring them to ane speedy period, which was neglected at this tyme; as may appear *infra pag.* 370.

No. 893,
p. 361. 10 *Novembris* 1687, *post meridiem.*—At Privy Counsell, James Grhame Advocat his gift of being sole Solicitor to his Majesty was red, and he admitted, and sworn only *de fidei*. The former two laid aside, viz., Sir Robert Colt and Mr. George Bannerman, ware excepted against as not attending in the Vacance. The former pension being bot 300 lb. sterling, for dispatches and all, he gets 200 lb. sterling more added, on the account of the expenses they are put to in sending expresses for publick affaires up and doun the countrey; tho' they spend litle that way, they taking the help of Gentlemen who have interest in those parts of the countrey.

Mr. George Bannerman was also threatned with the loss of his office of being the King's Chamberland in Fyfe. He had gott it on the deprivation of Balbedie, my Lord Lochore's father, throw his neglecting to take the Test, because he found not that office named in the Act of Parliament; and Balcarras owing some of thesse dewties, and being craved be Mr. George, partly from pique and partly from his kyndnes to Lochore, he dealt to get in ane brother of his to that place, on this pretence, That a Chamberlandrie being ane mandat and commission expirat *morte mandatoris*, and so dyed with the last King who gave it. (See *infra pag.* 380, wher it is tane from Mr. George.)

2^{do}. The Privy Counsell, now on the death of the Earle of Home Shireff-Principall of the Merse, and dureing the *annus deliberandi* that Mr.

Charles his brother takes, they name Mr. James Daes of Coldingknowes Advocat, to be the King's Shireff there dureing that space.

3^{to}. There is one Miller ane barbour proceffed, upon violent presumptions of affaffinating and beattung fundry peeple, and threatening and boasting others; bot they could not get a full probation for a Criminall Court; therfor they ordained him to lye in close prifon till ther should be ane fhip to transport him to the Plantations in America.

4^{to}. Ther is ane printed proclamation, difchargeing the importing of any aples, bot French ones; which was mainly defigned againft the Flanders aples as unwholefome.

5^{to}. One Andrew Grier merchand in Edinburgh, having not only ftolen fundry things himfelf from William Grierfon in the Weft-boll [Weft-bow] when he was his prentice, but alfo enticed and feduced Andrew Gray, prentice to Alexander Allan merchand thare, to give him out great quantities of iron, indigoe, and other goods, belonging to his Mafter; and told him, that Prentices ought not to want, and neided not compt to their Mafter for all they fold. This being at laft difcovered by Gray's confeffion, ther was ane criminall indytment of theft, and refet of theft, raifed againft him; and becaufe he was a landed man, by having fome houfes, it was ftatutory treason, and fo he got his indytment with found of trumpet. But fearing that he would flee, his Majeftie's Advocat and his informer petitioned the Counfell, that he might be imprifoned. Bot the Privy Counfell declyned this, and only ordained him to find caution to abyde the tryall under the pain of 5000 mks.; which was not the value of the fkaith and dammadge: But afterwards when he was imbezelling his chop and houfe, and putting all out of the way, upon a new application, ordained him to appear before them; and he fearing to be fecured, did then flee, and carried much money and goods with him. Bot fome of the goods, worth 150 lb. fterling, ware difcovered and feized upon at Cockeinzie by one of his cautioners. In the debate, fundry prettie queftions would have aryfen, as 1^o. If he could be infifted againft as refetter and acceffory, till Gray the principall theiff ware firft difcuft. 2^{do}. If Gray, who was *focius criminis*, could be admitted a witneffe againft Grier, it being *latens et occultum crimen*,

wher ther is *penuria testium*. 3^{tho}. Ther wer none but fingle witneffes for each fa&t, if this *ingularitas* could be conjoyned to make up ane full probation. 4^{tho}. Allan and Grierfon, the mafters, on the firft outbreaking had componed with him, and had taken each of them from him ane bond of 1000 lb. Scots. This was threatened againft them as theft-boot; wheras it was their oun goods, and they had not then ane full difcovery and probation as they have now. For thir poynts fee Sir G. Mackeinzie's Criminalls; *Item*, His Pleadings *in fine* about Robertfon's cafe; *Item*, Carpfovius' Criminalls, *parte fecunda de receptatorum pœna pag.* 316, *et parte tertia pag.* 130; that *socius criminis* in fome caices may be receaved ane witnes.

Theirafter, on the 9th of December 1687, the faid Andrew Grier's efcheat being put up at Exchequer, Alexander Allan, the partie damaged, craved it for his lofs, and for his expenfes in difcovering the theft and recovering fome of the goods. The [26th] A&t in 1661, allows reftitution out of the theiff's goods: Yet the Exchequer, after ane demurr, gifted it to James Smyth the Chancellor's fervant; and he was forced to compone with him.

No. 894, 11 *Novembris* 1687.—The Lords, to force the Advocats to attend them p. 362. fooner in the morning then ten o'clock, made ane A&t, that for every Advocat abfent when called on in ane a&tion after nyne, the Advocates Treafurer fhould pay 5 dollers *toties quoties* out of their publick money, referving him releiff and repetition againft the party abfent. This wes thought unjuft, to confifcat the publick ftock for the delinquence of ane fingle member of the Incorporation; even as if the common good of the Toune of Edinburgh fhould be fyned for the fault of any burges, wheras theffe are not forfaultable, bot by a generall cryme of the whole body; and the uncertain releiff referved him, does not falve the injuftice.

No. 897, 12 *Novembris* 1687.—Sir Thomas Dalziell of Binns being charged p. 363. to confirm his father Generall Dalziell his Testament, by the Commifar of Dunkell, within whose diocefs Binne lyes, and where his domicile was when he dyed, (tho' he deceased in Edinburgh.) The competition

arose between the former Bishop Bruce of Dunkell and his Commisar, (in whose tyme he dyed, and was not charged to confirm befor his deprivation,) and Hamilton the present Bishop of Dunkell, and Mr. George Pitcairn his Commisar, admitted upon the death of the former. (See [6th] *Julij* 1676, the executors of Wishart Bishop of Edinburgh, in Stair's 2^d vol. of Decisions, page 439.) Bot Sir Thomas alledged against them all, *Absolvitur*, because the Generall had disposed all in his lyfetime, and instruments of possession taken thereon; and so there were no confirmable goods. Answered, He had money lying in James Hay the Wryter's hand. Replyed, It was the pryce of lands bought before his death, and so it was not his money.

16 *Novembris* 1687.—Sir William Binning late Provest of Edinburgh, No. 899, p. 363. perswades Hope of Carls on the Testament of Collonel Gordoun, who dyed in Germany, and was the third who with Lesley and Butler killed Walsten [Wallenstein] Duke of Fritland [Friedland.] Alledged, This cause was *res hac tenus judicata* in Holland, and the Lady Carls assoylized there. Answered, The proces there was upon its priviledge, as being *testamentum militare*; and here it is not insisted on *super eo medio*, bot as holograph; and it is certain that *res judicata* takes no place, except the two lybells be both *super eodem medio*; and cited Boeckelmanus in his learned tract *de actionibus*, where he tells of one that had been *ter victus*, coming to him; he caused him intent the right and genuine action, wherein he prevailed, tho' he had so oft succumbed before. The Lords haveing advysed this on the 23^d of November, they fand the Lady Ker's had shunned to exhibite these papers upon oath, and to evade it, had retired out of the kingdom to Holland, and had assigned and conveyed her joynture, and all her effects, and particularly this right, to some confident for hir sone's behooff; so that any sentence against her wold be elusory and frustraneous, shee being *extra regnum*, and haveing nothing to affect: Therfor, before answer, they ordained Carls, her sone, betuixt and that day eight-days, ather to state himself as partie, and *legitimus contradictor*, *et litem in se suscipere*, and to find caution *judicatum solvi*, or else they wold instantly decern against her. And he having stated himself

as partie, they directed two commissions, one to Holland for her to depone anent the haveing, and to try if this defence was proponed there, to take of the *res judicata*; and the other was direct to Lubick, where the Testament was made, if holograph Testaments by their law be probative. The event of this proces was of great importance, being upwards of 40,000 rix dollars; and Sir William, in journeys to Holland, and in proceses, had wared more then 1000 lb. sterling on it.

No. 900,
p. 364.

16 *Novembris* 1687.—On the occasion of reprinting Sir George M'Kenzie's Law Institutions, he started ane Querie, What he should determine in his title anent succeffionall heretable rights, in the caice of the decease of ane grand-child whose guidfire and father-brother are both alyve, which of the two shall succeed him. For if it wer a brother that dyed, another brother wold exclude the father. (See Stair's title, Succeffion, pag. 101 *et seqq.*, *et titulo* 30, Executorie, num. 32, pag. 170.)

2^{do}. It was Quæreed, If the serving ane breive for ane air or ane tutor may be continued? Some thought, if the Court be once fenced, and the executions verified, it may upon just grounds, as hath been found in the case of compryseings.

No. 902,
p. 366.

17 *Novembris* 1687, *post meridiem*.—At Privy Counsell, Mr. Alexander Birnie Advocat, pershues James Reid merchand for ane ryot, in apprehending and incarcerating him upon ane old caption, dated seven years agoe, when he had ane intimat suspension of the debt, standing undiscussed, and ane discharge. The ryot was very clear. All that Reid said for himselfe was, That the discharge and suspension being very long agoe, he was willing to make faith he had forgot them. He is imprisoned and fyned in 100 mks. Scots for Mr. Alexander his charges.

No. 904,
p. 367.

18 *Novembris* 1687.—By the Chancellor's order, many of the Taverners and Vintiners of Edinburgh are cited befor the Privy Counsell, for breaking the [14th] A& of Parliament in 1681, against penny-weddings; notwithstanding wherof they continue the abuse to the extortion of the leidges.

22 *Novembris* 1687, *post meridiem*.—At Privy Counsell, in regard of the scarcity and dearth of oysters, and their scalps, (many of them haveing perished in the cold winter 1684,) they by A& and Proclamation discharged the exportation of them for three years to come. No. 907
p. 368.

2^{do}. Ther is a letter from the King, narrateing his Toleration to the Presbyterians, and that it was not his purpose, that when they marrie, baptize, and bury, that the emoluments used to be payed in thesse three caices should be withdrawen from the Readers and Precentors at the regular Churches; and therfor ordains thesse dewes to be payed them as formerly, else ther should be no registers for such baptisimes or marriages, as ware keeped at the Churches; which ware a prejudice. Bot for this, the meeting-houses would offer to keep exact registers also. See the printed A&, bearing nothing anent thir collections, because they could abstract that, if they ware ordered to give them in to the Magistrats or Ministers.

3^{tio}. Ther is ane letter against Dr. Hardie, which *vide supra*, pag. 357.

4^{to}. Ther is a letter from the Dutchesse of Monmouth, to put out one Anderfon who had sett up ane meetting-house, within her Brugh of Regality of Dalkeith, out of her Toune; which the Chancelor caused execute, and threatened him with prisson. All this was done to terrifie them to comply with the King's designe, *ut metus ad multos, sed pæna ad paucos perveniat*.

23 *Novembris* 1687.—The Lords advysed the probation in James Grahame bailzie of Edinburgh his proces against Samuell Soutton and the other ouners of the Calmer. He had transacted with ane Chapman in Kirkaldy, for his part of that ship, and afterwards *viis et modis* he retired that discharge and cancelled it; and then pershued the other parteners for his share, and befor the Admiral gives ane oath, which we alledged to be contradictory. The Lords fand the tenor of his discharge to Chapman proven, and the trust made out, and therfor affoylzied the defenders. This left some tash on Bailzie Grahame. No. 910,
p. 369.

24 *Novembris* 1687.—Ther is ane order from the Chancelor to im-

prison James Glen stationer for selling ane pamphlet he had caused reprint, called, The Root of Romish Rites, Ceremonies, and Hærefies, proveing Popery to be only Paganisme and Judaisme revived, because he had not got ane licence. He alledged, It was printed befor that A& of Privy Counsell was made, discharging any books to be printed without the Chancelor's leave. This was thought unæquall dealling, feing they not only print at the Abbay, bot freely imports and spreads their Popish books against our religion, tho' they are prohibited by standing lawes to doe it, and wee not. Bot this shoves what a weak fence lawes unexecute are.

No. 913, 28 & 29 *Novembris* 1687.—The Commiffioners meett on Queanf-
 p. 370. berrie Treafurer his accounts, and the Chancelor refuses to proceed, till thoffe who acted for Hew Wallace, then at London, should add ane article to his charge, of ane confiderable fum he had got from ane Irishman, who had been at Bothuell-Bridge rebellion, and which he neglected to charge himself with; and it was to be prefumed, he concealed more of this kynd. They also demurred on 500 lb. sterling for Queanfberrie's charges in the Circuit Court in 1684; tho' he was in his oune countrey, and the rest got no charges. (See *infra* pag. 400, *et supra* pag. 360.)

No. 918, 30 *Novembris* 1687.—Sir James Stanfeild [Standffield] being found dead
 p. 372. some few dayes before this, befyde his oune house of Newmylnes, some thinking he had drowned himself in some melancholy fitt, to which he was incident: the fame of the country did runne, that he was strangled by his fons, or servants; for he had disinherited his eldest sone for his debauchery, and dispooned his fortune to his second sone, and failzieing of him to Commiffar Dalrymple. On this fuspition, ther was an order directed from the Privy Counsell to James Muirhead and [James] Crawford Chirurgians in Edinburgh to visit his body, and report; for they had very hastily buried him, pretending that they would not have his body to be gazed upon and viewed by all comers. And they having reported, that they saw signes of strangulation, and that his head bled

when Philip his eldest sone touched it, he is apprehended and imprifoned, as lykwayes two of Sir James his fervants, [John] Robertfon and [Samuel Spofforth,] and a woman [Agnes Bruce ;] which three laft ware brought in, on the 8th of December, before the Privy Counfell, and tortured with the thumikins, bot confefled nothing ; which Criminall Lawyers fay does purge and eleid, at leaft dibilitats and extenuats all the former *indicia* and prefumptions, at leaft thofle that were againft themfelves, if not thefle alfo which militated againft others. Bot the prefumptions here ware very pregnant againft Philip. For tho' other childring in fuch dubious cafes doe ever afcryve their father's death to murder, yet he being afked his opinion, afferted he thought he was not murdered, bot took rather pains to perfwade all that he was *felo de fe* and his own executioner ; and it was knowen he had attempted on his father formerly, which his father had declared to feveralls ; and he declyned to concurre with the King's Advocat in a perfuit againft the murtherers ; and was found to have much money, (tho' he gave in ane bill feeking ane aliment,) and did haftily bury him ; and bruifed blood was found about his throat ; and the mother had the dead cloathes all ready ; and the Minifter heard great noyfe that night : And now, to get favor, he had declared himfelf Papift : Upon which grounds ane criminal indytment being raifed againft him, as alfo for drinking the King's confufion, and for curfeing his father ; and his day of appearance being the 6th of February 1688, upon a Moonday ; it was alledgeat for him, in the terms of his exculpation, 1^o. Denying the drinking of the King's confufion, *eflo* he had, it was when he was very drunk. Answered *Advocatus*, It was the firft drink he began with, and he linked the King's confufion in with the Pope's, the Chancelor's, and the Devill's. Some doubted how far fuch volage expreffions inferred treason, being but *lubricum lingue* ; yet the Juftices fand it treason. 2^{do}. Alledged, Againft curfing his father, founded upon the 20th A&t of Parliament in 1661, that his father was fince reconcealled to him ; and had pardoned him, and fo *diffimulatione tollebatur*. Answered, That brocard holds but in injuries ; this is ane cryme that has ane *vindicta publica*. The Juftices repelled alfo this defence. 3^{tio}. Alledged, againft the parricide, That the prefumptions libelled ware not relevant ;

such as his preceeding threats, his hafty burying of him, the corps bleeding when he touched them; Mr. John Bell the Minister hearing great noyse and groans that night; the Chirurgeons attest, that he was not drowned but strangled; the miraculous providence of the two children discovering the truth against their very parents, the one a boy of thirteen, and the other a lass of eleven years, who were not sworn, not knowing the importance of ane oath, but only declared that they heard their parents telling one to another that the turn was done; and that Philip carried very stoutly, and that they should have put a stone about his neck to make him sink: And that his murder might be ascribed to other causes, seeing it is nottour he was once mad, and that it can be proven he was once melancholy, and hypocondraick thereafter; and that he used to tell himself, that in one of thesse fitts he rode towards England with ane designe never to have returned, bot that his horse stopped at (*blank in MS.*), and wold not go forward, switch him as he pleased, which he looking upon as the finger of God, returned home again; and that once he was throwing himself out at ane window at the Netherbow, if Thomas Lendall had not pulled him in by the feet; and that the very week before his death, he desired George Stirling to let blood of him, because his head was light: And that it was against all law to take one's life upon presumptions; for which error the city of Amsterdame once lost their priviledges. (Which see *alibi* in another litle MS., with the caice of Mure of Auchindrain, for killing the Tutor of Cassells, tryed in 1611; and Swintoun's in 1666, for killing his wyfe at Corstorphine; and the caice of the Parliament of Paris, in *Serven Robertus de Serris*, &c., in Hendry the 4th's reigne, of the mother pershued for causing ane Baxter be unjustly tortured as suspected of killing her sone, wheras robbers afterwards taken confessed they had done it. As also Sand's *Decisiones Frisæ, in fine*; *Codex Fabrianus*, and other Criminalists, anent condemning upon strong presumptions.) Yet the Lords fand thesse presumptions complexly relevant, and so repelled all his defences: Bot sustained that alleadgeance of his exculpation, that Sir James was melancholy the day befor his death, to infer ane presumption that he made away himself. And the probation being led on the 7th of February,

which may be read in the printed tryall; only they had some affidavits from London, which are not therein mentioned, being the oaths of the keepers of theſe priſons, where the ſaid Phillip the pannell had lyen, who deponed that he oft curſed his father for not releiving him, and boaſted, that if he were out, he ſhould diſpatch him; and that one Bettie Drowrie being with child to him, had followed him to Scotland, and might poſſibly be on the plot; but this was not produced to the Affyſe, becauſe it was but an adminicle, *et teſtibus non teſtimoniis eſt credendum*. The Affiſe having enclouſed late that night, they found him ſimply guilty of the firſt and ſecond; and art and part of the third, viz., the murder: Which verdiſt being red upon the 8^t of February, the Lords of Juſticiary decerned him to be hanged upon the 15^t of Februar, at the Croce of Edinburgh, and then his tongue to be cut out for curſing his father, and his right hand to be cutt off for the parricide, and to be put up on the Eaſt-port of Hadingtoun, as neareſt to the place of the murder; and his body to be hung up in chains betuixt Leith and Edinburgh, and all his lands and goods to be conſiſcat for the treaſon.

The 15^t day being come, and the gallows and ſcaffold being up, he was reſpyved for eight dayes longer by the Chancelor, at the Preiſt's deſyre. He craved by ane bill, that theſe already tortured for his father's murther might be re-examined. This he thought would clear him on their reiterated denyal: Bot the Counſell refuſed it, leaſt it ſhould harden him.

The 24^t day being come, he is hanged, and his tongue cutt out, and hand cutt off. He had tampered with the Popiſh Preiſts, and profeſſed himſelf to be of their religion, hoping therby to get his lyfe: Bot when he ſaw that did it not, he then deſerted them, and called for Proteſtant Miniſters, (tho' the Preiſts had prepared ane ſpeech for him, bot when he bade them pray publick for him, they ſaid, That was not their way;) and to his laſt breath he denyed all the particulars he was condemned for; which made many ſuſpect his ingenuity, ſeeing the firſt two crymes were clearly proven againſt him, and in privat confeſſed by him. He ſeemed very penitent, and ſerious for his Sabbath-breaking and other finnes, and imprecated ane judgement againſt himſelf if he

was in the least guilty, or on the foreknowledge of his father's death. And some thought, if not a miraculous, yet an extraordinary returne of his imprecations, that accident of the flipping of the knots on the rope, wherby his feet and knees were on the scaffold, which necessitated them to strangle and worrie him, bearing therein a near resemblance with his father's death. And ane new application having been made, that they might be allowed to bury him, Duke Hamilton was for it, but the Chancellor would not, because he had mocked his religion; so his body was hung up, and after some dayes being stollen down, it was found lyeing in a ditch among some water, as his father's was; and by order, was hung up again, and then a second tyme was taken doun. This is ane dark case of divination, to be remitted to the great day, whither he was guilty or innocent. Only it is certain he was a bad youth, and may serve as ane beacon to all profligate persons.

No. 921, 1 *Decembris* 1687, *post meridiem*.—At Privy Counsell, the King's
p. 375. letter anent the Magistrats of Edinburgh was read, nominating Magnus Prince to be Provost, (being then Dean of Gild,) and allowing the Toune Counsell to elect all the other Magistrats: And the Chancellor gave Sir Thomas Kennedy the Counsell's thanks for his care in the Toune's affairs.

2^{do}. Ther were also letters for one Coutts to be Provost of Montrose, and for fundry other Burrowes.

[*Item*,] Blair Drummond brought down also with him the *Congée d'elire* for Doctor Ross Bishop of Murray, the Archbishop's nevy, to come to Edinburgh; and one Mr. Hay minister at Perth, to be Bishop of Murray, by Balcarras his favour.

Item, One Mr. Donald M'Bain, late minister at Innernefs, haveing left his charge, and come and joyned with the Presbyterian Ministers at Edinburgh; the Privy Counsell, on the Bishop's motion, calls him, and tries him upon his principles, if he thought Archbishop Sharp's death a murder, or Bothwell-bridge a rebellion, or disowned defensive armes: And, his answers being unclear, he was imprisoned; tho' some complained of this way of expiscating speculative opinions, (*infra pag.* 394.)

Item, The King's Advocat made the motion anent Doctor Hardie, which is *supra pag.* 357.

Item, On Thomas Weir's complaint against Thomas Steill, about the felling of Anderfon's Pills, *de quo supra* 2^d August [21st July] 1687, the Committe took Miftrefs Hastie's oath who communicated the secret to Steill, if shee truly got the mysterie of composing it from Miftrefs Anderfon; and shee deponeing that shee did, it was their opinion that both should have the joynt liberty of felling it. Tarbet was for both of them to configne the secret in his hand, that he might compare them, bot this was shunned. See Steill licenced *infra* by the Counsell, *pag.* []

2 *Decembris* 1687.—At Exchequer, Archibald M'Keun, late fervitor No. 923, to my Lord Maitland, produces ane letter and gift from the King, p. 376. constituting him Keeper of the Counsell and Treasurie-chamber, and furnisher of coall, candle, pen, ink, wax, and paper, to the Exchequer; and appoynting the perquisits and emoluments at the door, and by the Christmef's bun, &c., to be divyded between him and the Usher, reserving only to the Usher the two mks. upon every Æquee, especially since there were some new rouses erected since Thomas Robertson's new building. Compeirance was made for the Lord Ballantyne, and William Clelland his depute, alleadgeing his predecessors were hereditary Ushers *ostiarii* to the Exchequer by Queen Mary in 1566, for eleven pounds sterling of pension to himself, and the casualities of the office to his Depute; which could not be taken from them, being a part of their property; and whatever James Somervell, the last possessor, did, in assumeing Mr. M'Keun, he could not invert his author's possession; and two could not live by it. The two Masters of Privy Counsell lykewayes compeared, and contended, that to them as *præcones* belonged the calling of causes, &c. It was referred to ane Committee.

3 *Decembris* 1687.—Boswell of Balmuto's case is debate. He being patron of Auchterdiran Kirk, and haveing taken 1000 lb. Scots from one Mr. John Wood, for presenting him, on the death of Mr. Thomas Kinninmounth the last minister, under the pretext of giving him liberty

of duelling in the Manse, which was said to be the patron's own house; this was complained upon by ane bill, 1^o *As velata et palliata simonia*. 2^{do} That the Manse was the minister's, and was no more the patron's then all the rest of the Heritors who contributed to build it.

Eodem die.—The Lords, by their A& of Sederunt, discharged that custom at the Minut-Book, of putting up acts or decreets against one in particular, and others in generall, wherby the leidges are wronged without knowing. Therfor Mr. Robert Falconer, keeper of that book, is ordained to designe all their names without hudling it up in the generall words of *others*.

No. 924, 6 *Decembris* 1687.—Is the Proclamation of Privy Counsell, reviveing
p. 377. the A& of Parliament in 1681 against Pennie-weddings.

No. 926, 8 *Decembris* 1687.—The Duke of Gordoun's reduction against the
p. 377. Earle of Aberdeen was advysed, wherein the Duke quarrelled ane resignation he had given the Earle when Chancellor, of some lands he held of him, that they might be held of the King, that so they might not be within the Duke's new Regality he had got, and that the Chancellor might consent to the passing of it. The Duke alledged, It was not read to him, and it was of ane different tenor than what was communed on, viz., That he should acquyre lands of the lyke value, and take them holden of him; and craved Preist Dumbar, Mr. Thomas Gordon, and other witnesses, to be examined thereon *ex officio*. The Lords fand it only probable, *scripto vel juramento*, especially sieing he had accepted ane backband from the Earle, which he now kepted up, and did not produce.

No. 927, 8 *Decembris* 1687, *post meridiem*.—At Privy Counsell, the Lords
p. 377. refused ane petition of Lauderdale's craving a sequestration of my Lord Glendoick's papers, that he might recover some letters the Dutchesse of Lauderdale wrote to him, undertaking the English debt; (*de quo supra pag. 320.*) So he most goe on in ane exhibition or incident, *via ordinaria*.

2^{do}. John Gibson wryter in Edinburgh, pershues James Ker barbour, and his sone, for debauching away his daughter, and marrieing her clandestinely, contrare to the 34^t A& of Parliament in 1661, and 9^t A& in 1672, declaring he should lose his *jus mariti*, and which requires proclamation; tho' they wer introduced in the Presbyterian times, and so are alledged not to be enjoined now. Yet I find the Popish Counsell of Trent so just as to appoynt *trinas denunciationes ante matrimonium*. It's referred to ane Committee.

3^{to}. Sir James Stanffeild's fervants are tortured, (*de quo supra pag. 372.*)

4^{to}. Cochran of Kilmarranock, and five or six moe gentlemen of Dumbarton-shyre, complain of Hamilton of Orbistoun, Gartshoar, and others, for electing ane Collector of their cesse, and giving them [him] a great fallarie, when they offered one alse sufficient ready to serve for less. Answered, The plurality had chosen him, being 15 or 16, and ther was but 6 against him; and they gave him no more then what had been the custome of that Shyre. Some thought they could not burden the rest with ane greater fallary when they offered one alse good for less. Yet the President and the Counsell found the plurality might, especially seeing the Commiffioners of the Cesse are lyeable *subsidiarie* for the Collector's deficiency.

9 Decembris 1687, *post meridiem*.—At Exchequer, ther is ane competition No. 930, for the last Earle of Home's escheitt. It was claimed by the Tutors of^{p. 379.} ane English boy, (who had ane coall-work, and had furnished for severall years coalls for the Earle's house,) who was Popish, upon his own horning; and being the first discoverer, was very favourable: Yet the Lords preferred Dalhousie's sifter, his Lady, on that same horning, (wherby the debt of the horning wold still be payed,) for security of her joynture, but with the burthen of the few-dewties the Earle owed to the Exchequer; which afterwards was restricted to what they should not recover by ane proces, to be carried on at her charges.

2^{do}. Fletcher of Aberlady his Tutory is craved by Mr. Alexander Swinton, his mother's father, and also by Hary Fletcher his nearest agnat, (Saltoun, his elder brother, being disabled by his forfaultor;) and

they objecting, his wanting of 25 years, and craving at least one of the mother's fyde might be conjoyned with him. The Lords preferred Hary, feing he could serve Tutor of law, if he were refused this dative; and thought two did but make variance and division, and feldome aggried.

3^{to}. Greir's escheitt, (*de quo supra pag. 362.*)

4^{to}. M'Keun's gift, (*de quo supra pag. 376.*)

5^{to}. Hugh Wallace having obtained ane gift and letter from his Majestie, in Bailzie Brand his good-brother's name, of the escheitt of Edward Ruthven, and, the debt of the horning being payed, then the rest of the benefite of the escheitt to come to Edward's tutors, for securing the transactions they had made. This was opposed at Exchequer by Clara and Patricia Ruthvens, Edward's sisters, and Murray of Spott, husband to Clara, as contrare to law, for Tutors to cloath themselves with their pupill's escheat against compt and reckoning for their means. The Chancellor stoped it, till he should wryte to the King, and inform him of the illegality therof.

No. 931,
p. 379.

10 *Decembris* 1687. — Ther is ane complaint and overtour made amongst the Advocats against the Agents about Adjudications, That there is not one amongst 100 of them consulted with Advocats; and yet they put up to their clients a consultation given, wherby many of thesse decreits are null, thorow wrong lybelling and other informalities, and may be reduced to the leidges prejudice. Theirfor it was craved, no Advocat should appear to seek ane Adjudication, except he were employed and consulted. *Queritur*, Where ane adjudication is fought after ane renunciation to be air on a generall charge, if there be need to raise and execut ane speciall charge? Some thought, It might be insert in the renunciation that he renounced to be air in speciall. Others better, That the generall charge might also requyre him to enter air in speciall; but this were to alter the style of thesse letters.

No. 932,
p. 380.

13 *Decembris* 1687, *post meridiem*. — At Privy Counsell, ther is ane complaint given in by Matthew Cumming merchand in Glasgow, and his wife, against one Captain Rutherfoord, who was quartered in their house,

and pretended he wanted some money, and alleadged it was stollen by his landlord and wyfe, and caused carrie them lyke malefactors to the guard: For it was pleaded they were not in the caice of Inn-keepers and Taverns, to be lyeable for what was imported within their house; and it was debated if the edict *nautæ, caupones, tabularii*, extended to thesse whoffe *officium* was *gratuitum*, and gives only Souldiers lodgeing and quarters. Yet they got no redrefs.

2^{do}. There is a letter from the King, taking away Mr. George Bannerman of Dunbuge Advocat his gift of Chamberlandrie of Fyfe, worth 1200 mks. the year, which he got on Balbedie's not taking the Test in 1682; (*vide supra pag. 361, et seq.;*) and now my Lord Lochore, by Balcarras his means, gets it back again. Mr. George offered to debate his right, but could not get ane hearing.

3^{do}. There is ane letter from the King to the Presbyterians in Edinburgh, in answer to ane addresse of theirs, craving that if any of their peeple should by throng be without doors, it should not be construed to be ane feild-conventicle. The King grants this; but withall discharges them to make use of Heriot's Hospitall, or the Magdalen's Chappell, or their Common Halls, for meeting-houses; pretending that thesse belonge to the King; wheras they are truly *res universitatis*, as *forum, theatrum*, &c. This was to cause them, with ane summe of money to Melfort, buy the liberty of thesse houses; which they did: And then the King adds, he will continue his favour, so long as they continue loyall, without stirring up or alienating the peeple from him.

14 Decembris 1687.—Sir William Sharp being pershued by Sir Alexander Gibson, Clerk, for ane debt of Sir William his uncle's, he produced ane letter from the King, stopping all proceses against him for his uncle's debt, till he got in that which the King was owing him. The Lords storned at this, and proceeded notwithstanding of the letter, as surreptitious, *et rescriptum contra jus, quod ab omnibus judicibus refutari debet*, (*Lege . Codice Si contra jus vel utilitatem publicam.*)

The Lords are not so uniform to themselves in all cases; for they stopped the Lady Saltoun's proces against Dumbartoun, on a letter, *infra pag. 395*

in fine. Bot Sir William procured ane new letter to the Lords, which was red on the 12^t of January 1688, bearing, That the Commiffioners of Treaſurie had acquainted the King, that tho' he had diſcharged the Lords of Seſſion to proceed againſt Sir William Sharp of Scotſcraig for ſome debts of his uncle's, wherin he was perſhued by Sir Alexander Gibſon, and others, which the King had taken off; therfor willed he ſhould not be troubled; for thir were not the debts, for which he got the aſſignment upon Orknay and Zetland. The Prefident was very diſpleaſed with this, as ſtopping juſtice; bot at laſt complied: yet wold not record the letter.

No. 935, 15 *Decembris* 1687.—The Duke of Gordoun perſhues Sir Ewan
p. 381. Cameron of Lochell [Lochiel] for his lands of Mamore: (See it *ſupra ultimo Februarij* 1687.) Alledged, He cannot quarrell his right of property in thir lands, becauſe you, by your factors and chamberlands, ſince your retour of the quinquenniall poſſeſſione, (which is your title to thir lands,) accepted the few-dewties from him, and gave him diſcharges; and you have allowed it in your compts, which was found relevant 20th February 1679, Earle of Aboyne *contra* his Vaſſells, in Stair's 2^d volume; and 6th June 1671, Steill *contra* Hay of Rattray, *ibidem* pag. 729: And this holds in taking rent after ane warning. Anſwered, *Non relevat*, unleſs the Duke had taken it himſelf, and that after the intenting of this reduction: and cited [the deciſion] in 1683, Burnet Archbiſhop of St. Andrews caſe againſt Betoun of Blebo, about changing his waird-holding to tax; where the Lords allowed the Biſhop to quarrell it, tho' he had taken the tax-dewtie. Replyed, There was *diſparatio*, for there Archbiſhop Sharp, who taxed it, was only ane adminiſtrator, and ſo could not pre-judge the benefice. 2^{do}. He was ane ſingular ſucceſſor, and ſo could not know what his predeceſſor had done. The Lords, on Carſe his report, in regard of the ſeeming contrariety of the practiques, ordained them to be heard in preſence. The Prefident thought, that if Lochell inſiſted in his reduction of the Duke's quinquenniall retour as to ſuperiorities, he would prevail; for the Inqueſt could never retour him to be in the naturall poſſeſſione of lands, when he got only the few-dewty, which is bot *poſſeſſio*

civilis. See of this retour Stair's first tome, 23^d and *ultimo Julij* 1666, Earle Southesk against the Marquess of Huntley. Bot to shew the Duke what he was to expect, the Lords decyded this poynt that same day in a parallell case to make it a preparative, and to shew that ordinar people got the best justice. For,

Eodem die.—The Lords fand in a case betuixt Wilson and Smyth, that a subje& superior accepting few-dewties, after he knew ane recognition was incurred, was ane passing from that casualty; wherein it was argued from Craig, *diegesi* pag. , That *argumentum a forisfactura ad recognitionem* was good; and yet the taking few-dewties from a Rebelle would not be the remitting of ane forfaultour, *Ergo*: But the Lords fand *ut supra*.

Eodem die.—The Earle of Dumbartoun's letter from the King to the Lords of Treasurie, is red, requyreing his Officers of State to concurre with him in getting that poynt he had in debate with the Lady Saltoun, decyded in his favours, viz., That the bygane annuities of her lyferent should not affect the lands of Saltoun, in prejudice of the King and him as donator, it being ane leading caice: And the King founded on the 3^d A& in 1584 *in fine*, that bygane few-dewties and annuells, in cases of forfaultour, are presumed payed. (See *infra* more of this, 24 *Februarij* 1688.)

This 17 of December, being Saturday, the Sessio[n] rose, tho' the [6th] A& of Parliament in 1686, anent the Christmase Vacance, bears from the 20th of December to the 10th of Januare inclusive; and so Tuesday being the 20th seemed to be ane Sessio[n]-day; bot it wold have broke a week, and signified litle as to the dispatch of buffines.

CHRISTMAS VACANCE.

22 *Decembris* 1687.—The Chapter of Edinburgh convened by the No. 935, King's *Congée d'elire*, and Mr. Andrew Cant, Minister of the Colledge-^{p. 382.}

Kirk of Edinburgh, haveing the vote next to Doctor Robertſon, declared he only elected Roſs, Biſhop of Murray, to be Biſhop of Edinburgh, in obedience to the King's letter ; and the reſt followed his way of voteing : At which the Archbiſhop of St. Andrews, his uncle, took exceptions, as ane reflection, and a mark of their ſydeing with Paterſon Archbiſhop of Glaſgow againſt him ; there haveing ariſen great animofities betuixt them two, becauſe St. Andrews had ſo far eclipsed him at Court, and obtained his nephew to be made Biſhop of Edinburgh, contrare to his deſignes ; and, which was worſe, contrare to the form ever obſerved before, viz., that his Maſteſty did never recommend any by his *Congée d'elire* till he had ane approbation of his perſon by four or five Biſhops at leaſt ; and here there were three Biſhops, in a bend, received without his advyce, viz., Roſs to Edinburgh, Hay to Murray, and Gordoun to Galloway, who is Glaſgow's Suffragan, and yet is born in upon him without his knowledge ; and tho' a Scotsman, yet he is bred in England, and knowes not our Eccleſiaſtick lawes and cuſtomes ; and Edinburgh is a ſtranger to the Clergie he is comeing amongſt. And thus Balcarras, or any who has acceſs to the King, ſhall make ane Biſhop in tyme comeing, without examination what he is.

Eodem tempore.—The Chancellor takes tryal of that report which was ſurmized, that James Stewart had uſed this argument with one Mr. James Hutcheſon, a Preſbyterian Miniſter, that he needed not fear the Prince of Orange his recalling or puniſhing them for accepting the Toleration ; for what if he ſaw the Duke of Berwick ſucceed, and then he wold confirme it ? This diſcovery reflecting on the Government, and comeing abroad by Mr. Hutcheſon, now Miniſter at Edinburgh, to whom Mr. James revealed it ; the Chancellor ſent for Mr. James, and he thorow fear firſt denying it, he intended to cauſe cenſure the other (Mr. Hutcheſon of Edinburgh) for ſpreading of it : But, on ane confrontation, Mr. James was forced to confeſs it ; and ſo he was inſtantly diſmiſſed, and diſcharged ever to vent it again.

At this tyme alſo came abroad Penſionary Fagell's Answer to James Stewart's Letter, writt by the King's order, to procure the Prince and

Princes of Orange's approbation of the Indulgence, and his dispensing with the lawes. Fagell replies, that their Royall Hynesses are for a Toleration to Dissenters, and not for pressing consciences; but can never approve of the taking away of the Tests, or admitting Papists to be Members of Parliament, or in Judicatories, Church or Army; that seclusion being the great security of the Protestant religion. This letter did prejudice to his Majestie's affairs with the factious in England.

Eodem tempore.—The Archbishop of Glasgow, by the Chancellor and Blair Drummond's recommendation, nominats Walter Gibson to be Proveist of Glasgow, tho' he had never so much as been on the Toun Counsell befor.

Eodem tempore.—Ane motion is made amongst the Lords, when they mett in the Vacance, about their public affairs, that all bills first be presented to the Prefident, that he may know what is fitt to be read be the Clerks, and what not.

ANNUS 1688.

No. 936,
p. 383.

Undecimo Januarij 1688.—Wednesday the first Session-day.—The Lords, haveing litle else adoe, did confider the markets, and revive the A& of Parliament, made in 1681, anent weighing of flesh, fallen in defuetude, and the execution theirow proves ane greater extortion to the markets then wes before; and they give the following orders to the Magiftrats of Edinburgh for cleaning the ftreets, and anent viviers and beggars, viz., Confidering the account given in to them by the faids Magiftrats of their diligence in relation to the cleaning of the ftreets, and freeing the fame of beggars, is no wayes fatisfactory; therfor they ordain the prefent Magiftrats, to give in to Sir Alexander Gibfon Clerk to-morrow, the names of thofe who were Conftables the laft year, and lykewayes the names of theffe who are Conftables this year; and grants warrands to Macers, to ceit [cite] theffe who were Conftables the former year in one of the quarters of the Toun, to compear befor the Lords on Tuefday next, to anfwere for their neglect in doing their dewty incumbent to them, in order to their cleaning of the Toun of filth and neaftines, conform to the orders enjoyned, and to hear and fee fuch censures inflicted upon them for the fame, as the Lords fhall find juft. The Lords doe give order and warrand to Macers to ceit thofe who were Bailzies the laft year, to compear before them, upon Fryday next, at three o'clock in the afternoon, to hear and fee it found, that they have incurred the certification contained in the A& of Parliament, for not cleaning the Toun, and freeing the fame of beggars; and alfo to ceit Archbald Home tackfman, the faid day, to anfwere for his not performeing his obleifment in the contra& for cleaning of the Toun. The Lords ordains intimation to be made to the prefent Magiftrats, that they have it under their confideration to order the Magiftrats [of] the former year to refund the impofition formerly impofed and exacted from the inhabitants upon the account of cleaning of the Toun, in regard the fame has not been effectually done.

2^{do}. The Lords having confidered the Table of viviers given in by the

Magistrats, they find that the rates therin are exorbitant, and that the Table is defective; and therfor discharges the publishing therof; and declares that they will, by their own authority, sett down ane Table for the pryces of wyne, and other vivers; and recommends to the Lords Drumcairn and Carls to prepare, and bring in such ane Table: And the Lords declares they will proceed against and punish the transgressours of the rates to be sett down, and that ather in market, or out of market; and it is hereby declared, that if any persons shall bring in any insufficient flesh or fouls to the market, that they shall be called and fyned, and the meat confiscat.

The Lords doe require the Magistrats to nominat and appoynt Visitors of the severall markets, who are to attend at the tyme of the market, and to see that there be no greater rates exacted then thesse in the Table, and that insufficient fleshes and fouls be not brought to the market; and who shall be called and fyned, if they be found negligent in thair dewty. And if the Magistrats shall not appoynt Visitors, the Lords declares, that they will name and appoynt persons for visiting the markets.

Against this there wes ane representation made for the good Toun, That tho', by Act of Parliament in 1686, the Lords had the inspection of the cleansing of the streetts referred to them, yet the sole power of the markets, &c., resided in the Magistrats, who were both Shireffs within themselves, and Justices of Peace, and who, by their charters of erection, and others, have the sole government and policy of the Burgh committed to them; so that their Constables and servants are only lyeable to be judged by them; and they had right to the fynes arryseing from their transgressions; and if the Toun and its Magistrats maleverfed and were negligent, then they were accountable to the King and his Privy Counsell, bot not to the Session.

12 Januarij 1688.—There are two letters from the King read in the Session; the first is Sir William Sharp's, *de quo supra* pag. 380, and the second was anent my Lord Boyn. For Arthur Forbess of Balvenie had made ane complaint, That he had bought in a pley and ane depending proces upon the estate of Balvenie since his being a Lord. Boyn

alleadged, It was in his perfon many years before. The King requyres the Lords to try it. Boyn craves Arthur may figne it, that he may be punished for defameing it if he fuccumb, conform to the [68th] A& in 1537. Arthur did it. This, with other accidents, made Boyn very uneasy.

Eodem die.—At Privy Counsell, *post meridiem*, one James Zule, tennent at Keith, perfhues Robert Hepburn for ane ryot, in turning him out of ane part of the houle, and feafing on his cornes. Alleadgit, That he might lawfully doe it, for he had renounced his tack. It is committed.

No. 937, 14 *Januarij* 1688.—It was reasoned amongst the Lawiers, that our
p. 384. [2d] A& of Parliament in 1617, allowing, at leaft conniveing, at Simonicall pactions made between patrons and intrant Minifters about the teynds and their ftipends, was ane blot in our law deferving correction; and that Dr. Forbes had written ane learned treatife in Latine againft that A& of Parliament.

2^{do}. It was thought unjuft, and contrare to the analogy of law, that the executors of ane appeirand air fhould have right to the rents due before his deceafs; tho' Stair is clear in it. For Sir G. M'Kenzie rationally thought this vulgar error rofe from this miftake, that there is ane aliment due to the appeirand air out of his predeceffor's eftate; but in fo far as he has not uplifted, applyed, nor confumed it, it is not his nor his executors, but is *in hæreditate jacente*, and belongs to the next air; even as bygane non-entries, and other ungifted casualities of the fuperioritie doe.

17 *Januarij* 1688, Tuefday.—James Stewart putts on the gown again as ane Advocat; he had been out, and in a floating condition, ever fince the Declaration in 1663.

18 *Januarij* 1688.—At Privy Counsell, upon the newes of the Queen's being with chyld, a thankfgiveing-day was appoynted thorow Scotland. It was thought odd, the Prefbyterian meettings were not enjoyned to keep it.

19 *Januarij* 1688.—Sir James Foulls of Collingtoun, Justice-Clerk, dyes this day, and is fucceeded by Sir John Dalrymple. (See *infra* 23 *Februarij* 1688.)

Eodem die, post meridiem.—At Exchequer, ane new list of penfions ^{No. 939, p. 385.} comes from the King, moft of them in favours of Papifts; only Robert Barclay, for the Quakers, and James Stewart, for the Prefbyterians, are claſſed in with them; and getts, the firſt 200 lb. ſterling, and the ſecond 300 lb. And the laſt was found to be not yearly, but only for defraying his expenſes to London.

Eodem die.—Ane order, at Privy Counfell, upon ane letter from the King, diſchargeing any levies of men be the Dutch Officers, for ſervice of the States of Holland, under all higheſt pain. This was looked upon as a forrunner of a warr; but the pretence was, that our King intended levies of his oun.

2^{do}. On ane complaint of the Perewig-makers, that the exporting of hair made wigs ſo dear, they diſcharged any to carry it abroad.

3^{to}. There are mutuall lybells betuixt Sir James Stewart Shireff of Bute, and Mr. John Stewart of Aſcock Advocat, of ſeverall ryots, as the thruſting Aſcock out of ane feat of the Church wherof he had ane half, and the Shireff cauſing his cook fitt above him. *Item*, The taking doune ane ſcutcheon or coat of armes, and letting out priſoners the Shireff had put in; and Aſcock's entering into bands of manrent with ſome of the gentry, contrare to the old Acts of Parliament. It was remitted to ane Committee.

4^{to}. Sir James Rocheid, Clerk of Edinburgh, craves a ſequeſtration of a grandchylde of litle Francis Kinloch factor at Paris, called Jean Marjoribanks; her grandmother, who kepted her, being now dead: ſhee has about 3000 lb. ſterling, and is thirteen years old; and ſo he deſigned her for his oun ſone. But Mr. William Scott of Bavellaw Advocat, ſhewing a nomination of the grandmother, appoynting the Lady Bavellaw, his mother, to have the cuſtody of her, the Privy Counfell ordained her to be delivered up, conform to the grandmother's will, eſpecially

where they fucceed to any thing by them who makes the nomination. So Bavellaw may gett her ; but fhee being of age capable to chufe Curators, they will have the difpofeall of her perfon.

No. 940, 21 *Januarij* 1688, being Saturday.—I went to Fyffe to Abbotthall's
p. 386. buriall, who dyed the 17^t before, and returned the 24^t, being Tuefday night.

No. 944, 26 *Januarij* 1688, *post meridiem*.—At Privy Counfell, the Counteffe
p. 387. Dowager of Home perfhues Rentoun of Billie, Shireff-Depute of the Merfe, for oppreffion, in granting ane fummar warrand to break up her barn-doors, that John Hay a creditor infeft might poynd, (*de quo fupra* pag. 381 :) wheras 1^o He refused to give up the lybell to fee. 2^{do} John Hay had applyed to the Lords for a fequestration of the rents, (*ut fupra*,) and was refused. 3^{tio} There was ane fufpention of multiple-poynding raifed by the tennents depending, and the Lady had both the gift of her husband's efcheitt, and was executor creditor to him on her contract ; and theirfor craved he might be punished, conform to the 26 A&t of the Parliament in 1469, and other lawes : See the marginall note there for his abufeing the King's authoritie, (by which he fhould prote&t the leidges,) to the oppreffing of them. Answered, The poynt of right ought firft to be difcuffed, and it remitted to the Seffion ; and John Hay is a preferrable creditor to her ; and the Shireff may affift any who implore his aid ; and the Lords of Seffion only declyned to meddle with it as being *mixti imperij*. The Privy Counfell fufained the lybell, and named a Committee for examining the witneffes : And, on the 9^t of *Februarij*, it being advifed, the Lords ordained the Lady to be repoffeffed ; but withall appoynted her to find caution to refund it, if John Hay prevailed in the difcuffing of the fufpention. But afterwards they take off the neceffity of her finding caution, and waves that about the Shireff-depute's carriage.

2^{do} James Bofwall in Kinghorn, brother to Balmutoe, is perfhued at Privy Counfell by Anna Carmichaell, for ravifhing her out of her father's houfe of , and wounding her father, and carrieing her

to the Queenfferrie, where she was rescued. Being absent he is declared fugitive; wheron his escheitt falls.

3th. John Sleigh, Provest of Haddington, against Steill his tennent in Greengelt, for carrying away his cornes on the Sabbath night, with ane convocation of 63 carts, to defraud him of his rent, and after ane arreistment was laid on; and for beating and bruising him in the Toun of Lauder. Steill had a reconvention, That his master had incarcerat him after ane standing suspension intimat, and had charged him for terms he was payed of. Both were admitted to probation.

27 *Januarij* 1688.—The deceast Marquefs of Montrose made ane nomination of ten Tutors to his sone, with ane *quorum*, and his Lady and the Earle of Haddingtoun to be *sine quibus non*. Haddingtoun being dead, and the Lady being uncapable, by marrying Sir William Bruce his sone, and no *quorum* being filled up, the rest scrupled to act, alleading the nomination fell and became voyd; and therefor caused raise ane proces in the pupill's name against themselves, craving they might be decerned to act. Sir John Nisbet thought, that it was the will of the Marquefs that these should be preferred to all others, as long as any of them lived; but thought there being no *quorum* they behooved all to act joyntly. But it was contended by others to be null; and a decision was cited for it from Stair's first tome, *Januarij* 17, 1671, Drummond of Riccartoun. But see him 4 *Januarij* 1666, Fairfoulls; and 11 *Februarij* 1676, Turnbull and Rutherfoord. But there was no *sine qua non* there. The Lady, his mother, who married, offered to entertain him gratis, and at his age of ten years to quyte him 2000 mks. be year of her joynture, with her husband's consent. The annulling the Tutorie was thought to be on a designe to get him to breed Popish: But this wold not hold, for the Tutors in law were willing to serve; and tho' Grahame of Breckoe, his nearest agnate, be within 25, and so cannot be his Tutor in law, yet Grahame of Urchill, the next agnat, is willing to imbrace, and is Protestant; and his aunt, the Lady Callendar, offers to keep him. Only it is to be considered, if ane Tutorie dative at the Exchequer will exclude the agnat: *Vide legem xj. ff. de testamentaria tutela.*

The Lords, on the 31st of January, advyfed this, and could come to no refolution, there being feveral *non-liquets*. Then on the firft of February it was refumed again, and by the Prefident's power they fand the Tutorry null, the two *fine quibus non* haveing now failed. Edmeftoun and Harcuſs voted for the ſubſiſting of it; which, with other things, contributed afterwards, *ultimo Februarij infra*, to the laying them aſide.

29 *Januarij* 1688, Sunday.—The thankſgiveing for the Queen's being with chyld kepted by cannons, bonfyres, bells. The Archbiſhop of Glaſgow preaches, and ſayes, that ſhe had obtained this bleſſing from heaven by her piety and devotion, being oft tymes fix houres on her knees at prayer altogether; and the very next day, being ſo contrived, the 30 *Januarij* was ane faſt kepted for King Charles the Firſt's murder.

No. 947,
p. 388.

Primo Februarij 1688.—Mr. James Rainnie [Renwick,] head of the feild-preachers, was this day taken in Edinburgh, (*vide ſupra*, 18^t October 1687, ane Proclamation offering a reward for takeing him.) They were not seeking him, but ſome unfree goods that were ſtollen from the Cuſtomes; and he, ſuſpecting they were seeking him, bolted the door and ſhott ane piſtoll, which made him to be apprehended, and then ſome knew him. On the 3^d of February, he was examined before the Privy Counſell, and impudently diſowned the King to be his lawfull Prince: His pocket-book bearing thoſe he had correſponded with, and particularly one Mr. David Williamſon; the Meeting-houſe Preacher of that name was apprehended and imprifoned; but he denied any converſe, ſo at laſt was liberat.

Upon the 8^t of February, Rainney gets his Indytment at Criminall Court, and adheres to his diſowning the King's lawfull authoritie, or that he was his true Sovereigne, and called him only ane King *de facto* and not *de jure*: And to give him the abſolute power he aſſumed, was to put a creature in place of the Creator; and that it was unlawfull to pay cels to maintain ſouldiers to ſuppreſs the free preaching of the Goſpell; and that they might meett in armes to proteſt themſelves. He is found guilty of treaſon by the Aſſyſe, and condemned to be hanged in the Graſs-market on the 10^t Februar. But to ſee if he would renounce his

principles, and for other reasons, he was reprieved till the 17th of Februar, on which day he was execute; and it was thought he would have been spared, had not the people talked broadly that he met with favour as a secret Jesuit. What he owned appeared to some to be no more than what Mr. Samuel Rutherford's *Lex Rex* says, and *Naphtali*, and *Jus Populi Vindicatum*, &c., and other Presbyterians own the same, when they have power and may do it without hazard. He seemed to die composedly.

2 *Februarij* 1688.—Bailzie Thomas Wilfon against Mr. Robert Richardson wryter, reported by Lochore. Mr. Robert had taken down ane old land, which had ane timber fore-staire, and was rebuilding it; but the fore-staire he was re-edifying it of plaster; and attempting to carrie it so up to the top, seven storie high. Thomas Wilfon, and the neighbouring Heritors opposed this, as damming up their lights, smocking their chimneys, and by the vicinity endangering them with fyre, and theft; for they might step out of the one window to the other; and the Dean of Gild of Edinburgh had discharged him. He suspended, alleading the late Act of Toun and Privy Counsell for building in stone, in 1675, allows these fore-staires to be rebuilt of that same extent as formerly, *id est*, no broader or wyder; but provydes nothing against the highting of them. Answered, *Extensio* is all the three dimensions, and [comprehends] *altitudo* as well as the other two; and the tolerance is only *interdicto uti possidetis*, to have it no otherwayes then it was before: And tho' the adjacent tenements have no servitude *altius non tollendi* upon him; yet *Sneydeven* [Schneidewinus] et *Vinnius*, ad *Paragraphum l. Institut. de Servitutibus prædiorum*, gives another exception, viz., *Nisi statuto civitatis certa ædificiorum forma sit præscripta*, as here. And tho' *cujus est solum ejus est usque ad cælum*; yet here he has not the *solum*, the ground being the Vennall and King's High Street, and he has only a *protectum* cast out. The Lords fand he could not make this fore-staire higher then it was formerly.

Eodem die.—This day being Thursday, and a Privy Counsell day, No. 949,
p. 389.

yet becaufe Candlemeſs, the Chancellor adjourned the Counſell; and Fairfull preached in the Popiſh Chapell.

No. 950,
p. 390.

6 *Februarij* 1688.—In the evening and next morning many Litanies and Maſſes are ſaid in the Abbey, by the Popiſh Priests, for the ſoul of King Charles the 2^d, to bring him out of Purgatory, he having died on that day now three years agoe.

7 *Februarij* 1688.—Ane ſouldier is ſhott by martiall law for running away from his cullours, and robbing ſeverall houſes.

No. 951,
p. 390.

8 *Februarij* 1688.—Captain William Setoun, craving out the extract of his decreet of locality as ane creditor of Argile's, wherby the Lords gave him 5000 mks. owing to Argile by Sir Ewan Cameron of Lochell, which he had diſcovered himſelf; and the haill being 10,000 mks., Lochell got the half of it, as ane *præmium indicinæ*, (*vide titulum Cod. lib. 10, de his qui ſe deferunt* :) And the Duke of Gordoun having alſo a right to this ſoum, the King by his letter requyred the Duke to give Lochell ane diſcharge of it; wheron Lochell founded ane defence againſt William Setoun. Answered, There is a *jus quæſitum* to him by his locality, which a poſterior letter upon miſrepresentation could not take from him; and they being *ſocij* in this ſoum, Lochell could doe no deed to prejudge his colleague. The Lords, conſidering that they were only the King's Commiſſioners in this caſe, to diſtribute Argile's eſtate as he ſhould direct them, he might recall what they had done; and therfor appoynted Kemnay and Edmeſtoun to prepare ane letter to be ſent from the whole Lords to the King, to know his Majeſtie's pleaſure, whom he would give it to, containing a representation of the debate for ather partie, and their rights. (See *infra pag.* 403.)

Eodem die.—Rainney pannelled, (*vide ſupra pag.* 388.)

Eodem die.—Alexander Ogſtoun bookſeller in Edinburgh, is threatened for ſelling Biſhop Uſher's Sermons againſt the Papifts, and the Hiſtory

of the French Persecutions ; and all his copies of them are taken from him ; tho' Popish books are publickly printed and sold.

10 *Februarij* 1688.—The following Interlocutor was pronounced at No. 955, p. 391.
Exchequer, anent the Retailers of brandie. The Lords haveing considered the petition given in be the Merchands-importers of brandie against the Tacksmen of the Inland Excise of the Shyre of Niddale, &c., with the respective information given in *hinc inde*, by ather partie, in reference to the sexpence upon the pynt of brandie, for the Inland Excise therof ; they find from the first of November 1686, and in tyme comeing, that the Merchands-importers felling to gentlemen and others, in less quantities and bulks nor what is allowed to be imported and sold by the lawes and Acts of Parliament, albeit they doe not tap and retails the same, are lyeable in payment to the saids Tacksmen of the said Inland Excise, for what shall be sold be them to the saids gentlemen and others, notwithstanding they doe not vend, tap and retails the same, the quantity being always in smaller and lesser bulks nor what is allowed to be brought in, imported and sold, be the lawes and Acts of Parliament : And also finds, that what shall be sold by the saids Merchands-importers to Vintiners and others, who shall tap and retails the same, that the saids Vintiners, tappers and retailers only, and not the Merchands-importers, are lyeable for payment of the said Inland Excise to the saids Tacksmen ; the saids Merchands-importers giving always upon oath ane exact and true account to the said Tacksmen, [of the] Vintiner's and retailer's names, and of the respective and particular quantities sold be them to each one of them, when they shall be requyred be the saids Tacksmen for that effect. Compare this with the [2d] Act of Parliament in 1673.

Eodem tempore.—Conform to the instructions (*supra* 11 *Januarij*) be the Lords of Session to the Magistrats of Edinburgh anent the Markets, the Toun prints their Table containing the prices of vivers.

15 *Februarij* 1688.—The Dutcheffs of Lauderdale being pershued by No. 956, p. 392.

the Lady Boghall, for some jewells in her possession, legated to her by the Countess of Lauderdale; and for her active title, producing ane notoriall extract of the said Ladie's testament out of ane Tabillions books at Paris. The Lords fand it not probative, unless it were furder astructed and adminiculated.

No. 958,
p. 392.

16 *Februarij* 1688.—The Archbishop of St. Andrews gets a letter from the King, gifting him the half-year of the house-maill that the Toun of Edinburgh was ordained to pay for the Bishops of Edinburgh, since Paterfon's going to Glasgou: Which was thought a mean thing in him to seek; and in [12th] Appryll theirafter, he obtained another letter, giving him that half-year of the Bishoprick of Edinburgh, cropt 1687, because Bishop Paterfon got it in Glasgou, and could not get it in two places. But his nephew, the succeffor, had better right to it then he.

No. 959,
p. 393.

17 *Februarij* 1688.—One Sutherland is pershued, at Privy Counsell, for ane ryot in beating of another. It is remitted in respect of its smalnes to the Justices of Peace, and Shireff of Caithnes, where it was done.

No. 963,
p. 394.

22 *Februarij* 1688.—Walter Gibson Proveist of Glasgou his charge against Crawford of Carsburn was reported by Collingtoun. It was on ane decreit of the Admiralls. The Lords ordained merchands to give their opinion, Whither if ane ship be sold, where the buyer undertakes the burthen of the outreik, if masts then will fall under the notion of outreik, sieing shee could not be ane compleat ship without masts; *lege* 44, *ff. de evictionibus*; *Molloy's tractat de Jure Maritimo*, pag. 194; and *Loccenius de Jure Marit. lib. 6, cap. 2, pag. 21*. 2^{do}. To give their advyce, and report what is the custome of the Carribbee Islands of giveing gratifications to the Governors that their ships may be declared free; and if the ship beares all or only a third part of it; for which Molloy was ceited again, *lib. 2, cap. 6, pag. 234*; and fand no annual-rent due for the outreik; and that they were not such *impensa in navem* as buir annuel-rent, as victualls, provissions, and bottomrie does.

23 *Februarij* 1688.—At Privy Counsell, his Majestie's Commiffions are red, makeing Sir John Dalrymple Justice-Clerk in Collingtoun's place, and restoreing Sir George M'Keinzie to be King's Advocat, in Sir John's place; and they are both received at Counsell; and the next day Sir John enters on his tryall at the Seffion, as ane probationer in Collingtoun's room there; and haveing perfyted it, he was on the 28 of Februarie fworn and admitted ane Lord of the Seffion: But they declared, that his being Justice-Clerk, tho' it gave him precedency in the Criminall Court, yet it gave him none of the Seffion, and so [he] was only the youngest Lord.

Eodem die.—Mr. M'Bain (*de quo supra* pag. 375,) is again staged for his disloyall principles and ambiguous answers, and sent back to prifon.

24 *Februarij* 1688.—Richard Cunningham's action against Duke Hamilton being called, the Duke craved that Sir John Dalrymple, who was not yet admitted a Lord, might be allowed to plead for him. The Prefident told him that could not be done, he being now entered on his tryalls. The Duke contended, that Sir John Gilmure had pleaded for his son-in-law, Sir John Nicolson, after he was Prefident. But that was becaus he was declyned from judging in it; so the caices were not alyke.

28 *February* 1688.—The young Lady Curlourie gives in ane bill for ane aliment to herself and children, out of her husband's estate. The Lords, by the means of Sir John Dalrymple her neighbour, and Edmestoun her brother-in-law, gave her 50 lb. sterling; which was very hard to gratifie ane bankrupt with the creditors rents, where the estate will not pay their yearly annual-rents.

Eodem die.—The children of Sir Robert Prestoun of that ilk, on a bill, get also ane modification from their father's creditors of 600 mks. this year, dureing the dependence of their compt and reckoning.

Eodem tempore.—Alexander Crombie Vintiner, is fyned in 100 lb.

No. 963,
p. 395.
No. 965,
p. 396.
No. 968,
p. 397.

and imprifoned by the Lords, for extortioning the leidges in breaking the printed rates of meatts. He and the other Vintiners had [given] in alfo ane bill againft the Wyne-merchants, bearing, that fince they were ordained to fell the pynt of wyne at eightein pence, they ought to have a proportionall abatement of the Merchant's price. The Lords declared they would confider it in June; but thought they needed no eafe, becaufe they had it from the Merchand at thirteen pence the pynt, and fo had profit enough; but afterward the prohibition was taken off, and they allowed to fell it as befor at twenty pence.

29 *Februarij* 1688.—This year being Biffextile.—The King's letter is read, laying afide my Lord Harcus and my Lord Edmeftoun, (notwithftanding of his brother Nidderie's power, to fhew they would spare none that did not comply, whatever their relation be.) Some thought their voteing for Montrofe's Tutorie, *supra* 27 *Januarij*, was refented; others, that complaints were made that Harcus had behaved himfelf unjuftly in feverall caufes of Aytoun of Inchdairnie his fon-in-law; and juft the day before this, Mr. Robert Pittilloch gave in a bill to the Lords againft Harcus, calling him ane bryber; and the Lords had ordained Mr. Robert to be apprehended. But the true reafon was fupposed to be, that whereas the other Lords had given ane dilatorie answer to the Quæree put in to them by the Chancelor, anent the King's taking away the Lawes and Tests, they had peremptorly declared their opinion againft it. Some thought Pitmedden had now got company; and others of the Lords were affrayed, looking on this as ane warning fhott.

Eodem tempore.—Mr. Robert Keith of Lentush, Regent at Aberdeen, is perfhued, at Privy Counfell, by Drum (Irving) and his freinds, for circumveening him, and caufeing him marry Marjorie Forbefs, his wyfe's fifter, and aeting the part of the Minifter himfelf, by joyning them in marriage; which ane Juftice of Peace may doe in England. Her freinds alleadged that Drum carnally knew her, but they denyed it. (See more of it *infra* 26 June 1688.)

2^{do}. The Chancelor fends ane letter to the Magiftrats of Aberdeen, to

give the Roman Catholicks the use of their Trinity or Nicolas Chappell there, for their worship. The Trades to whom it belonged opposed it: But on ane second letter it was done. (See *infra* more 15 May 1688.)

SPRING VACANCE.

6 *Martij* 1688.—By a letter from the King, the Magdalen Chappell in Edinburgh is given back to the Presbyterians again, they haveing given money, (*ut supra* pag. 380.)

Eodem die.—The Dutcheſs of Lauderdale perſhues Sir James Dick of Preiſtfeild for ane ryot, in ſo far as ſhee haveing taken out of Duddingſton Loch five of the ſwans, which, or their parents, were put in by her Lord; he took them back again except two, whoſe ſkins ſhee had given to Generall Drummond in his ſicknes, to warm his breaft; for which he broke up doors, which 1^o, No Conſtable, by the A&t of Parliament 1661, is allowed to doe. 2^{do}. He could not *sibi jus dicere*. Alleadged, The ſwans were his oun, he ſtanding infeſt in the Loch, and conſequently in all that fed on it; and tho' they were *feræ naturæ*, *paragr.* [12, *lib.* 11, *tit.* 1,] *Inſtitution. de Rerum diviſione*, yet they were like wild beaſts incloſed in his park, and fiſh in his ponds; and tho' the fiſt were put in by the Duke of Lauderdale, yet the produ&t was Sir James's. The Lords of Privy Counſell fand, if they had come of their oun accord and bigged there, then they were Sir James's; but ſince the owner who put them in was knowen, they fand they belonged to the Dutcheſs; and Sir James his tolerance to let them ſtay in his Loch did not make them his. Upon which he turned all the reſt out of his Loch. But Duke Hamilton alleadging that the Loch bounded with the King's Park, and ſo belonged to him, he put them in again; and thus took poſſeſſion in the King's name of the Loch; which will coſt Sir James ane declarator of property to clear his right.

Eodem 6 Martij.—The Earle of Callendar on a bill getts up the wryts No. 969,
p. 398.

of the tailzied estate only that were sequestrat, dureing the dependance of the plea between him and Lord John Hamilton.

The same Earle pershues the Countess Dowager of Callendar for ane aliment. Alleadgit, 1^o Her joynture of 8000 mks. be year is no more but ane fuitable aliment to herself, confidering how much shee brought with her. 2^{do} There is ane superplus both to entertain him, and to pay the annuel-rents of the debts. 3^{tio} By ane ratification, he had obliged himself never to quarrell her rights.

Ib. § 3. *Eodem die*.—One Niven, a musitian in Innernefs, is pershued for deceiving one of his scholars called Cumming, a Minister's daughter, and a las of 12 years old, and marrieing her, and getting ane country Minister to doe it, by suborning one to call himself her brother, and to assert to the Minister, that he consented. This being ane abominable cheat and imposture, ane theft, and a perfidious treachery, haveing a complication of many villanies in it, he was sentenced for [an] example, to stand at the pillorie with his ear nailed to the Tron, and then to be banished; which was done.

The Privy Counsell also declared the marriage void and null *ab initio*, as procured by fraud, without sending then to the Comisar Court; and farder, declared the maid's reputation to be untainted or stained by this fact. (See the case of Andrew Hill, also ane musitian, who debauched Sir John Foulls his sister, now Lady Mountainhall, in the Criminall Registers, at September 1654, and the law citations there; and Drum Irving's case, *infra* 26 June 1688.)

This present Pope Innocent the eleventh hath made a very just rule, dischargeing any man to teach musick, or other arts to weemen in Rome; and allowes them only to be taught by some of their own sex.

Ib. § 4. 13 *Martij* 1688.—Mr. John Cockburn, Minister at Ormestoun, haveing got ane licence to print the Monethly Transactions, and account of books out of the Universall Bibliotheque and others, and haveing printed that of January 1688; yet the Chancelor thinking some passages of it reflected on the Popish religion, especially that abstract of Smyth's Dis-

certations, and Mabillion's *Musæum Italicum*, tho' he be ane Jesuit; therfor he discharged him the printing any more, and himself alone recalled the Privy Counsell's order, and said he would cause his own Churchmen doe it better.

Eodem tempore.—The Duke of Gordoun parts for London discontented.

15 *Martij* 1688.—At Privy Counsell, the Earle of Egglingtoun pershues the Lord Montgomery his sone for ane farder aliment, upon this ground, that when his former Lady, Dumfreis his daughter, lived, he had 6000 mks. out of the estate himself, and his Lady 4000 mks., because they lived apart; and it not being provyded whom her part should fall to, on her death, he alleadgit it fell in to him, and so craved 10,000 mks. be year. Answered, That *ususfructus finitus revertitur ad proprietatem*; and by his contract of marriage he is proprietor, and no more is provyded to his father but the 6000 mks.; and the estate being under great burthen, it could bear no more. The Lawiers upon the Counsell were clear, that they could give Egglingtoun no more in justice. But he haveing given secrete assurances (as his Sone said) to the Chancellor, to be the Court way, his sone was appoynted to pay his father's new contracted debts, extending to 9000 mks. or thereby, and to get ane discharge of the proces; and that the Earle should never crave a farder aliment: But [they] gave the Earle dureing his lyfe the jurisdiction of the Baillearie of Cunningham and Kyle, with this quality, that his depute should be answerable to the Chancellor: (this is to make all Judges depend on him;) and so long as Egglingtoun should live in England, there is 300 mks. added to his lyfrent yearly, to pay the exchange in remitting to him his money.

Eodem die.—Hugh Douglas mason in the Dean, gives in ane complaint against Hary Nisbet younger of Dean, that he had denounced and imprisoned him after ane intimat suspension, and threshed out his cornes. Answered, 1^o No intimation made but by ane reid-coat, so *non constat* whither it was real or ane sham. 2^{do} Ane stop on ane bill lasts but fifteen dayes be Act of Sederunt, and he forbeir till that was expyred

3th. He only secured the cornes by right of his hypotheque as master, which may be done tho' there be ane suspension. The Lords, after tryall, finding no written intimation, fand no ryot, and theirfor assoilzied.

Ib. § 3. *Eodem die*.—There is ane letter from the King, makeing Claverhouse Proveist of Dundee. So this, joyned with his Constable's jurisdiction, makes him absolute there. Balcarras is ordained to install him.

Ib. § 4. 16 *Martij* 1688.—At Exchequer, the creditors of William Robertson put in for his escheitt, because Sir William Paterson, the former donator, is payed. The Lords preferred John Drummond and the other creditors who were in the back-band after Sir William, and so refused the bill.

Ib. § 5. 20 *Martij* 1688.—There is ane A&t of Privy Counsell made and printed, that Jaylours shall not be bound to accept publick prisoners or malefactors sent in to them, unless probation be also sent alongft with them; and that the King's Advocat shall, the next Counsell-day, signifie the cause of the imprisonment. Which is very just, and like the English *habeas corpus* wrytt, by which prisoners in England needs not lye after three termes, but may be brought to tryall. And aggreis with *lex quinta Cod. de custodia reorum: Eos vel velox subducat pœna, vel examini subjiciantur et liberentur*. But this with us is not for publick crymes against the State, but for private ones.

Ib. § 6. 22 *Martij* 1688.—Ane proclamation from the King, lyke that in England, calling home all the Scots souldiers or seamen abroad, especially in the Dutch service. Some obeyed, and others stayerd on their perril. (See it in print.)

Ib. § 7. *Eodem tempore*—Was printed the Rules of the Popish Colledge in the Abbay, inviting all children to be educat there gratis; as Mountebanks promises great things with their programs. Colledges needs ane erection and patent under the Great Seall. I know not if there was one here.

Eodem tempore.—Bailzie Alexander Anderfon haveing broke his neck <sup>No. 971,
p. 399.</sup> by ane fall, there is ane petition given in by his brother's children to the Toun Councill of Edinburgh, pretending he had papers of theirs. The Toun sequestrated and sealled his wrytts. Then they applyed to the Privy Counsell for ane power to inventar them, which was denyed; becaufe he had children of his oun, and they had ane remedy by exhibition. So the Magistrats took off the restraint.

William Pantoun Wryter to the Signet, being one of the Tutors-testamentars, left by Bailzie Anderfon to his children, gave in ane complaint on the nyntein of Appryll against the other Tutors, for taking of the Magiftrat's sealls, and proceeding to inventar without calling of him, and theirby imbezilling the pupill's means. Answered, He was cited, and the affair was civill; and they were Tutors-testamentar, which needed no prævious solemnity; and if they maleverfed, they were responfall. The Lords of his Majestie's Privy Counsell, haveing heard and confidered the lybell and answers made thereto, with the examination of Bailzie Montgomery, who sealled the charter-chest, study, cabinet, and coffers, did find, That the defenders did precipitantly take of the faids sealls, (the Bailzie not being present,) for which they ordained them to receive ane reprimand at the bar; which was accordingly done. But ordains that the defenders, when they meett theirafter, acquaint the other Tutors-testamentar, and particularly William Pantoun the pershuar; that he and they may see to the right manadgement of the pupill's affairs, and have inspection of the pupill's papers to that purpose; and as to any other poynt lybelled, the Lords leaves both parties to pursue, as accords, and in the ordinare course of law.

27 *Martij* 1688.—The Chancelor, at Privy Counsell, declares he is ^{Ib. § 2.} called by the King to Court; and the Archbishop of Glasgow proposes that the Counsell may wryte ane letter of recommendation with him; which was done. He parted on the 29th.

28 *Martij* 1688.—At Privy Counsell, the Lord Bargeny and his <sup>No. 972,
p. 399.</sup> tennents complain of Hugh Mure, Bailzie of Carrick, for oppreffion, and

fyneing them for keeping false weights for selling their wooll; wheras theirs was more conform to Lanark weight, which is the standart of Scotland, then his. Answered, He got his stone-weight from the Dean of Gild of Air, which is the head burgh of the Shyre; and this is all he is bound to doe, by instructions given to the Justices of Peace, by the [38th] Act of Parliament in 1661, article anent the weights and measures; and if Air be disconform, heavier or lighter then Lanark, then they should be fyned, and not he. The Lords affoizied him, if his weights aggried with Air; and reserved to examine if Aire's were exact. And after tryall of both, finding my Lord was calumnious in his complaint, they, on the 26 of Jully, fyned him in 50 lb. sterling, as *temere litigans*.

Ib. § 2. 29 Martij 1688.—At Privy Counsell, Mr. George Hendry, Minister at Corstorphine, pershues Torwoodhead, or the Lord Forrester, for oppression, not only in discharging all his tennents to come and hear him, and sending them all to the Meeting-house, bot also [for] discharging them to bring home his coalls, labour his glybe [glebe,] &c., which they were accustomed to doe; which was to starve him, lyke the Roman *aquæ et ignis interdictio*. Corstorphin raised ane recrimination against Mr. George, that in 1679 when this King was here, he refused to pray for him because he was ane Papist. Tho' this falls under the Acts of Indemnity since, and is pardoned, yet it makes him deserve no favour. The discord was, Mr. George had lent him money, and he was now seeking it back.

Eodem die.—The Earle of Lauderdale being to serve himself air to the Duke, his brother, some papers necessary for instructing the brief being lying in ane proces, in Sir Patrick Home's chamber, he shifted to give them back. The Lords, on Lauderdale's application, ordained him to be imprisoned till he re-delyvered them; tho' Duke Hamilton pretended it was ane case meerly civill, and they might get them at the Register's, or produce the saids Register-books, which would instruct as fully. And accordingly, on the 5th of Appryle, the Earle was served air-male to his brother. The President of the Session was Chancellor

of the Affyfe. There was ane protestation taken for the Lady Zester, that he had infert lands in the claime belonging to her, as air of line; which was very unnecessar, seeing he *eo ipso* that he was now served air-male, would be liable to denude.

Eodem tempore.—The Archbishop of St. Andrews prevails with the Univerfity there, to fend up with the Chancellor ane addrefs or opinion to the King, that he may, by his Prerogative, take away the Pænall Lawes without ane Parliament. Five of the Masters, or Regents, refused to figne it, viz., Mr. James Weems of Fudie, one of the Rectors, Mr. James Martine, Mr. Cunningham, Mr. Fentoun, and Mr. William Sanders Mathematick Profeffor.

At the fame tyme, in Berwick, Mr. Pratt the Major [Mayor,] the Aldermen Haggartson, a Papist, the Governour and the Officers of the Garrison, and some of the Burgers, with the Episcopall Minister, contrare to his intereft, sent ane addrefs to the King, that they shall choyse fuch a Member for the Parliament as shall consent to take away the Pænall Lawes.

5 *Aprilis* 1688.—At the Committee of Privy Counsell, for publick No. 973, affaires, one Orrock, ane Presbyterian Minister, haveing called the King p. 400. ane Idolater in a sermon, and that Episcopacy was not of God's planting, tho' it should grow up in the Church; and attempting to preach in St. Andrews, the Archbishop caused apprehend him, that he might be censured; wheron ane tumult followed. The Committee ordered him to be transmitted to Edinburgh, and, on the 19th of Appryll, he is proceffed at Counsell; and they offered to prove by the Toun-officers, that Hamilton of Kinkell beatt some who came to apprehend the said Orrock. They were rejected, because they were pershuers of the lybell. Whereon ane new lybell was raised, without their names in it, to make them capable to be witnesfes: Bot the Counsell, against the Bishops their inclinations, referred the affair to the King.

Eodem tempore.—There is ane new letter from the King, complaining Ib. § 2.

on their delay of ending Queensberrie's Treafurer-accompts, and ordain-
ing the Auditors immediatly to meett and end them. And then at laft
they cloffed them on the 19th of Appryll, and fent them up to the King,
who perufed and approved them, and gave him ane exoneration: And
the King was 19,000 lb. in his debt. And fo Queensberry returned to
Scotland. (*Vide fupra pag. 370.*)

Ib. § 3. *Eodem tempore.*—There is ane complaint by the prefent Magiftrats of
Culrofs, againft Sir Alexander Bruce of Bromehall, that he had taken
the tennent of their mylne with caption, tho' they, as the King's Magif-
trats, of his fpeciall nomination, were not lyeable for debts contracted
before their entry. The Counfell difcharged all farder procedour.
This makes the fecurity of Burghs, by lending them money in this
juncture, very bad.

Ib. § 4. *Eodem tempore.*—There is a letter from the King to the Toun of
Aberdeen, commanding them to inftall one David Cumming, Clerk, with
Sandilands, their prefent one; which touched not only on the Toun's
power of electing, bot lykewayes the Clerk's property, by giving to
Blair as was faid.

Ib. § 5. *Eodem tempore.*—Many printed copies of Penfionary Fagell's Letter,
and the Reflections and Defence of it, being droped in the fands of Leven,
and other places in Fyfe; there was ane fecret order to Balcarras his
troup to gather them all up from the countrie people, and burn them.

No. 974, 6 & 7 *Aprilis* 1688.—At the Criminall Court, [John Allan] father
p. 401. and fone are pannelled for coyning of falfe dollers. They were appre-
hended at Falkirk, upon fufpition of fome toolls and materialls found
befyde them; bot they denyed all. Yet upon ftrong prefumptions of
frequent ufeing and venting them in markets, the fone is condemned to
be hanged. Wheron ane outcry aryfeing on the injuftice of the fentence,
his day of execution was prorogat, and delayed; and at laft, on hopes
of his lyfe, he confefled, and before fome of the Privy Counfellors he

fhewed the way he forged them : which fome called ane acceffion to the cryme in the byftanders. And ane Procurator in Lithgow, who bad him denye, is ordained to be pannelled for his difingenuity. It's doubted how far this is founded in law, fieing Bifhop Hall and the beft Cafuifts think a man is not obleidged to confefs his oun guilt, but put the perfhuer to prove it ; efpecially if it be capitall.

And thus he was delayed from tyme to tyme, till the 29th of June, on which day he was hanged at the Croce of Edinburgh ; he dyed difcompofedly, being furprifed, and expecting his lyfe ; and had attempted the day before to efcape, but was difcovered.

Eodem die.—One Cranftoun, Bailzie in Kelfoe, is pannelled for murdering of a woman, in fo far as on a flight delation againft her of theft, he wrongoufly imprifoned her, and nailed her cloathes to the floor ; where, after fome dayes, ſhe dyed. He is affoylzed for want of probation ; which fome faid was hyred to goe out of the way.

12 *Aprilis* 1688.—At Privy Counfell, there is ane letter from the No. 975, King, commanding the march of Dumbartoun's fouldiers to York, by ^{p. 401.} land, where there had been fome tumult againft the Meffe-Preifts, to mortifie that Toun. Others thought they did not adventure to goe by ſea, becaus the Hollander's fleett was then out : Bot as there was no warr declared then, fo Douglaſſe's men went afterwards by ſea.

2^{do}. Bailzie Alexander Brand perfhues John Callendar, before them, to refound 120 lb. ſterling he had unjuſtly extorted from him on a wrongous imprifonment at London. The Bailzie was dealling with the Magiftrats of Edinburgh to arreſt him ſummarly as ane ſtranger, bot they did not think the [8th] A& of Parliament in 1672, did empower them to doe it.

3^{tio}. The Lord Duffus haveing killed Roſs of Kindefs, upon ane fudden quarrell, there is ane precognition craved anent the manner, which was alleadged to be in ſelf-defence ; bot the neareſt of kin, with the Clan and furname of Roſs combyneing, it was then ſtopped. (See it *infra* pag. 406.)

4^{to}. There is ane order to apprehend the Skipper and faillers of that

Burntisland boat which runne doune the other by negligence, wherin was Captain Murray, Abercairnie's brother, wherby he was drowned.

5^{to}. The Archbishop of St. Andrews his gift to the half-year of Edinburgh, (*de quo supra*, pag. 392.)

19 *Aprilis* 1688.—*Item*, The Privy Counsell renewes all the old A&ts anent the right packing and cureing of salmond, and re&ifieing many abuses therein, and discharging Coupers from being Tacksmen of salmon-fishing, or Heritors to pay their servant's fees in fishes, or any to buy from servants, because they are not corphed upon the place.

Item, It was insinuat to Leivetennant Collonell James Murray, Philiphaugh's uncle, that the King was to put the Lord Frendraught, a Papist, in his place; which was afterwards done in June, and ane pension given to him fixed upon the pay. Bot if they had not trusted Frendraught more nor him, he might have continued, and the other have got the pension, if it was to be truly payed.

3 *Maij* 1688.—At Counsell, the Lady Reidhouse, daughter to the Lord Saline, pershues Reidhouse her husband for ane aliment, in regard he did not cohabite; and gets ane modification of 800 mks. yearly; bot the annuel-rent of her own tocher was to be a part of it. Shortly after this, he was killed in ane duell, so shee came to the possesseione of her joynture.

Eodem tempore.—Collonell Buchan's fouldiers arryve at Leith from London; and Douglass's regiment goes up in that same frigate in their place.

Item, Some octavo Bibles sent from London to Alexander Ogftoun stationer in Edinburgh, are seased on at Leith by Mistress Anderson, the King's Printer, on the pretence of ane old A&t shee had, discharging the importation of any Bibles of that fyze, because shee could furnish the countrey: bot hers seemed bad, both in the paper and print.

No. 976, 15 *Maij* 1688.—The Chancelor haveing returned on the 12th to Edinburgh from London, he did this day produce the following letters from
p. 402.

the King: 1^o. Ane answer to their recommendatorie letter of the Chancellor, whereby the King appoynts them to trust him in all things as his own mouth, and his chieff Minister of State; tho' circumspect politicians will bot spareingly use so great ane power. 2^{do}. Ane letter making three a quorum of the Treasurie, which was five before; and the Chancellor to be *sine quo non*, which gives him ane great influence and dependence; and he immediatly stopped all payments till he considered farder, except the pensions due to the Papists; and there was ane separate letter putting the Lord Frendraught on the Exchequer. 3^{tho}. Ane letter appoynting Mudie's Mortification for ane Church in the Grafs-market of Edinburgh, to be employed for building ane Church in the Cannogate, since they want the Abbay Church. This should depryve the Bishop of Edinburgh of his house-rent, which was payed out of the annuell-rent of that mortification. 4^{tho}. Ane letter reducing Captain Graham's company, or guard in Edinburgh to 50 men, being before 120. The designe whereof was thereby to ease the Toun of so much pay, extending to 800 lb. sterling a year; that they in compensation of it might give the Earles of Arroll and Strathmore ane discharge of that debt they owed with Argile to Heriot's Hospitall and ane assignation, that they may obtain ane locality and releiff on Argile's estate: Which is not *ad idem*, sieing they are only administrators, and the Toun should be bound to give security to make it up to the Hospitall: and the company may afterwards be augmented to its old number. 5^{tho}. Ane letter reduceing two companies out of Douglass's regiment, and adding them to Collonell Wauchop's. 6^{tho}. Ane letter giveing the Papists, as they had got formerly, (*pag.* 397,) the Trinity Chappell at Aberdeen, so now the pertinents and revenue belonging thereto. 7^o. The most materiall letter of all was his Majestie's explanation of his Indulgence and Toleration, which seemed to implye his designe of dissolving all Judicatories, till they act by new commissions, renouncing the Test: Which occasioned several Shireffs and Magistrats to forbear for ane whyle.

Eodem die.—The Toun of Paisley complain of the Earle of Dundonald, for causeing bury one Fleeming, a tennent of his in Ranferlie, (who

hanged himself,) at their gibbet-foot, within their propertie, and without their leave; and causeing imprifone their Bailzies for lifting his corpse and removeing them. The Magiftrats on a petition are fet at liberty. (See *infra* more of this, *pag.* 406.)

Eodem tempore.—His Majesty conferred the places of Harcus and Edmefton, in the Seffion, upon Mr. Alexander Swintoun of Merfingtoun, and Lewes Gordoun of Auchentoull, divydeing his favours betuixt the Prefbyterian and the Papift; and Balcaskie got Harcus his place in the Criminall Court.

Item, Captain M'Kye, lately come from Holland, is imprifoned in the Caftell of Edinburgh, on fufpition of a fecret correffpondence with the Prince of Orange, or fome of his fervants about him.

Item, Doctör Bruce, late Bifhop of Dunkell, his *Congée d'elire* comes doun to be Bifhop of Orknay, in place of Bifhop Murdoch M'Keinzie, lately dead. *Quæritur*, What way his Inftalment fhall be? for a Consecration it is not, fieing he was consecrat already, and the character not taken from him; neither can it be ane Tranflatione, there being no *terminus a quo*, that ceafing at his deprivation. So at moft it feems to be bot ane meer Inftitution.

16 *Maij* 1688.—On a bill given in by me to the Committee for publick affaires, I got ane order, commanding Mr. Robert Lauder to put and fequeftrat the patent he had got from my Father of his being a Knight Baronet, in their Clerk's hands, in regard my Father had, by a paper under his hand, declared he was diffatiffyed with its being conceived to fall to his fon George after his death; whereas he intended it fhould only defchend to me his eldeft fon and air, as God and nature appoints. (See *alibi* more of this.)

SUMMER SESSION.—JUNE 1688.

1 *Junij* 1688, being Friday.—Some thought the Lords fhould have fcrroupled to fitt, becaufe of the forefaid Proclamation diffolving the

judicatories of the Seſſion, &c. Bot the Lords juſtly would not draw in quæſtion their oun right.

2 *Junij* 1688.—Ane letter is produced from the King, in favours of Sir Ewan Cameron of Lochyell, procured by Robert Barclay his good-brother and Pen the Quakers, againſt Captain William Setoun, (*de quo ſupra*, pag. 390,) diſcharging Lochell of that debt: Which annulled William's decreit, and was ſaid, by the King's Advocat himſelf to be againſt property. Bot others alleadged, the Lords, in this Commiſſion divydeing Argyle's forfaultour, were bot the King's factors and truſtees, and ſo he might ratifie or recall what they did at his pleaſure.

Eodem die.—The creditors of Scot of Harwood perſhue for the roup and ſale of his eſtate, on the A&t of Bankrupts in 1681. The Lords ſuſpected ſome of the creditors aimed at it, the rentall was proven to be ſo low.

6 *Junij* 1688.—The Juſtice-Clerk reports this caſe: One liveing in the Weſt is decerned by the Comiſar there to reſpare another's honour, whom he had defamed, by appearing in the Church and craving him pardon before the Congregation. He preſents ane bill of ſuſpenſion, that he being ane Preſbyterian, had taken the benefite of his Majeſtie's Toleration, and ſo could not be forced to doe pennance in the Church, whither he had not freedome to goe and hear, bot ſhould be remitted to the Meeting-houſe. The Lords repelled his reaſons of ſuſpenſion, and ordained him to ſatiffie in the Church. Caſtlehill only differed.

13 *Junij* 1688.—The newes arryve at Edinburgh, that the Queen, on the 10th before, was delivered of the Prince. Bot the Chancelor being in Perthſhyre, the uſeing of any ſolemny was delayed till he arryved, which was the next day. And on the 15th, the Counſell iſhued out ane Thankſgiveing to be obſerved on the 21^{ſt} for this fyde of Forth, and the 28th of June for remoter places; and Balcarras was ſent to congratulate his birth; and Duke Hamilton parted the ſame day for London.

So the 21st of June was feriat at Edinburgh, and a Thanksgiving by sermons, &c., for the Prince's birth; and at night there were curious fyreworks at the North-Loch fyde.

No. 982,
p. 406.

19 *Junij* 1688.—At Privy Counsell, the Toun of Paisley and Shireff of Renfrew their mutuall ryots, (*de quo supra* 15 *Maij*,) anent their burying of the hanged man, were read and admitted to probation; and being advysed on the 26th of June, Dundonald, by his brother-in-law Claverhouse his power, gott the Magistrats imprisoned, and ordained to crave my Lord pardon.

2^{do}. Because the dyet for my Lord Duffus his precognition, (*de quo supra* 12 *Aprilis*,) anent his killing of Kindeys, fell on the 21st, which was feriat, therefor on ane bill, they prorogat it till the 22^d; on which day, witnesses being examined, they proved thir two poynts, 1^o. That there was no precogitat malice, at least they were reconcealled, if there had been any; and that it was not ane designed, bot ane accidentall ran-counter that day. 2^{do}. That Kindeys gave great provocations to Duffus ere he beat him, by giveing him ane indirec^t ley, and then offering his pistoll: Which probation is transmitted to Court, in order to obtain a remission; which and other favours was offered upon the change of his religion; bot he refused, as was said.

3^{tho}. Irving of Hiltoun pershues Gordoun of Setoun for circumveening him, in obtaining ane disposition from him. This certainly was more proper for the Session then the Counsell.

20 *Junij* 1688.—The newes comes to Edinburgh, that ane partie of Dragounes bringing one Houftoun a feild-conventicle preacher prisoner to Edinburgh, were fallen on in Galloway by thesse wild Fanaticks of Rainney's faction, and he was rescued, and five or six dragouns killed or wounded. The Privy Counsell by their Proclamation ordained the whole Heritors of thesse three Western Shyres to meett, and cause searck for the Rebels, and take the advyce of the indulgent [Indulged] Ministers, as haveing most power with the people there. This was against their principles, to medle with secular affaires, bot to leave that to the

civill Magiftrats; and fome few of the wifer excufed themfelves on that head. (See *infra* more, pag. 417.)

21 *Junij* 1688.—The Thankfgiving, (*de quo fupra*, pag. præced.)

23 *Junij* 1688.—The Lords make ane A& of Sederunt anent intrant Advocats on occafion of Mr. Matthew M'Kell's application; that they will examine themfelves fuch as enter *per faltum* by bill on their fufficiency and knowledge of the Scots law, and alfo be informed of their integrity of lyfe and manners. And accordingly, on the 27 of Jully, the Prefident asked a few flight queftions in prefence of the reft of the Lords, bot did not fuffer any others to examine him, bot admitted him prefently. For restraining the vaft number of intrants ane propofeall was made, that there fhould not enter above four Advocats in ane year.

26 *Junij* 1688, Tuefday.—Mr. Charles Littlejohn, Miniſter at Largs, No. 983, his caſe againſt Sir James Montgomery of Skelmurlie was reported by p. 407. Lochore: And the Lords fand, that the A&ts of Parliament did make the Lithgow meafure the rule of commerce; yet feeing in theſe paroches they had ane larger meafure, therefor the Miniſter was to receive his ftipend by the locall meafure of that part, referving to Skelmurlie to redrefs himſelf before the Commiſſion. (See 27 June 1667, Miniſter of Dalrymple againſt the Earle of Caſſells.) In this cauſe, the Chancellor ſaid, That the Miniſters was the part of the Kingdom that deſerved worſt at his Majeſtie's hands. Skelmurlie gave in ane bill of ſuſpenſion againſt this, pretending that this greater meafure could not be the rule, becauſe it was only introduced lately within the paroch betuixt Maſter and Tennent; and Lithgow was the ancient meafure.

Eodem die, poſt meridiem.—At Privy Counſell, the perſuit, mentioned No. 984, *ſupra* at the 29th February, [pag. 397,] is here [inſerted in,] at Drum p. 407. Irving's freinds inſtance, againſt Forbes of Auchreidie, and Marjorie his daughter, to get them puniſhed for makeing up ane mock-marriage betuixt Drumm and her, ather when he was drunk, or when mad and

furious, and so could not then give ane valid consent; and Mr. Robert Keith, ane Regent, was made use of to joyne them: For with us the sacerdotal benediction is not essential. Answered for the Lady, That Law presumes rather for sound judgement than for idiotrie or furiositie; and every degree of this is not sufficient to incapacitat one from marriage, which is rather *actus naturalis* than *civilis*, and requyres not much judgement; as appears by this, that a woman of twelve is capable of marriage; and the dawnings of reason are not alyke bright in all; some have greater vivacity of spirit than others, yet the precise measures are at the Judges discretion. (See a lyke case in Sand's *Decisiones Frisæ*, lib. 2, tit. 1, *definitione* 11.) And if frigidity or impotency be alleadged, that cognition belongs only to the Commisars of Edinburgh; and tho' the marriage was irregular, yet *multa fieri non debent quæ facta tamen valent, et multa impediunt matrimonium contrahendum quæ non dissolvunt jam contractum*. And marriage, by the lawes of all nations, is sacred, and hath ane oath annexed or implied, and is not to be violated nor Hudibrassed; *et quæ Deus conjunxit nemo separet*. (See Niven's case, *supra* 6 Martij 1688.) And thir substitutes in the tailzie, upon the view of their own succession, ought not to be allowed to hinder Drumm, the institute, to marry; and it was ane unparralleled act in them, to dragg him the next morning from his wyfe. And if men or women be once permitted to winn free, on their declaring their dissatisfaction at their marriages, it will be ane compendious way to ease some men of their wyves, *et e contra*. The Lords admitted ane joynt probatione anent the manner of the marriage: And his haveing given consent was fully proven, and nothing of his drunkennes or madnes then; so the Privy Counsell thought it ane marriage, which they could not loose. Bot thereafter, on the 12th Jully, they ordained Drum to be sequestrat, and put with Lesley of Boquhain, his brother-in-law; and he is allowed for maintaining of him 3000 mks. *per annum* out of the estate.

2^{do}. There is ane letter from the King, in favours of the Duke of Queensberry, recommending him to his Judicatories, as one whom he had now taken under his speciall protection. This style seemed new.

3^{tio}. The old woman Mattargett, condemned on ane Commission from

the Privy Counsell, by Mr. Robert Lauder and some other gentlemen, at Dumbar, upon some presumptions of witchcraft, is brought before the Counsell and examined: And they inclined to find her not guilty, and sent her back to prison: For the main thing proven, was her boasting and threatening such as refused to give her, and some evil accidents befalling them shortly after, and the lyke. Bot, on the 12th of July, shee being brought before them again, shee was remitted back to Dumbar to be burnt there, if her Judges pleased; because shee had once emitted ane confession, tho' shee retracted it. It was only carried by two votes, that shee was guilty, after they had read the probation.

4^{to}. Archibald Primrose of Dalmenie, being ceited for leasing-making on the Chancelor, and sowing discord amongst the King's Officers of State; he, by the freindship of Father Peters, and the Duke of Berwick, gott ane stoppe and countermand to the proces; and, to secure himself, he declared Popish. If the proces had gone on, James Stewart was adjoyned to concurre with the King's Advocat in the perfuit; which Sir George M'Keinzie took very ill.

29 Junij 1688.—The Dutches of Lauderdale's charge against the No. 987,
Earle was reported by Tarbet; bot shee not being satisfified, obtained p. 409.
upon ane bill ane hearing in presence: So it was debate and decyded on the 11th of July. This was ane charge on the Earle's ratification, (*de quo supra* 19 Decembris 1684,) to purge the lands and moveables disponed to her of all incumbrances, conform to ane condescendance given in; as 1^o. To pay fourtie-six years bygane feu-dewties of the lands of Duddingstone, disponed to her by the Duke, and due to the Lord Roxburgh, as Lord of the erection of the Abbacy of Kelso, of which they held, and whose minority made the years above forty to be due. 2^{do}. To procure renunciations of two infestments of annual-rent lyeing upon thesse lands. 3^{do}. To purge Stephen Thornlie's compryseing of the lands of Lethingtoun and others, disponed by her husband to her. 4^{to}. To free the moveables of the Duke's funerall charges contained in ane decreit obtained by Edward Masters, extending to 5000 lb. sterling. 5^{to}. The Earle being found lyeable to releive her of the English debt, (*supra pag.*

320,) ſhee craves he may pay two mortgages upon the lands of Ham, due to the Lord North, extending to 7000 lb. ſterling. Answered, That the Duke haveing bought the lands of Duddingſtoun with the burthen of theſe debts; and, haveing, by ane moſt exorbitant donation, diſponed them to his Lady, it moſt be ſtrictly underſtood to be no farder then *talis qualis*, as he had them. Bot his diſpoſition to her, containing abſolute warrandice, did cutt of this. 2^{do}. He could not be lyeable to warrand againſt Thornlie's debt, unleſs it were inſtructed; and the ſeaſine produced is not ſufficient, as was found in her oun caſe againſt Barntoun, in making up Anderſon of Hill's compryſeing. 3^{do}. As to the moveables, they are the natural ſubject of diſcuſſion, out of which funeral charges uſes to be payed; and ſo ſhee haveing gott the moveables ought to defray that charge, elſe it ſhould be like the Egyptian ſlavery, who tyrannically exacted brick, tho' they did not furniſh ſtraw; and therefor, ſhee haveing gott the ſtraw, ought to make the brick therewith. 4^{to}. The Earle's ratifications bears, to relieve the heritage and moveables of all debts, which can only interpret of ſuch as were in *rerum natura*, at the tyme of the ſubſcryving of the ratification, which the funeral charges were not; his brother, the Duke, being then alyve; and as to the mortgages, *non conflat*, that the right flows from the Duke her huſband; and therefore they are not bound to warrand it. The Lords ſand, if ſhee only craved ane general ratification, that ſhee needed not inſtruct the incumbrances; bot if ſhee inſiſted for particulars ſpecially condeſcended on, then they ſand ſhee behoved to inſtruct the ſame: Bot ſand the firſt three articles of Duddingſtoun and Thornlie's debts ſufficiently inſtructed, and decerned the Earle to purge them betuixt and Candlemeſs next; bot ſand him not lyeable for the funeral charges. And, as to Sir Francis North's Engliſh mortgages, ſand ſhee ought to produce ane right to theſe lands of Ham, from her Lord, ſieing theſe incumbrances were not granted by him, bot by herſelf.

No. 988, 2 *Julij* 1688, Monday.—At the Criminall Court, Mr. John Bayn of p. 410. Dalney is pannelled, (*vide ſupra* 19 *Junij* 1688,) by the neareſt of kin of William Roſs of Kindes, for his acceſſion to his ſlaughter; that,

being ane Justice of Peace, and present, he did not apprehend Duffus after he had killed Kindefs. Alleadged, 1^o By the instructions to the Justices of Peace, Act 38, in 1661, they cannot attach Noblemen nor Privy Counsellors, as Duffus was. 2^{do} *Esto* he were obleidged, he could not doe it, being single, and Duffus rydeing with many; and he was not bound to endanger his own lyfe; and courage is ane quality every one is not endued with, especially he being aged. The Lords haveing considered the lybell pershued by the relict and nearest of kin of the deceast, William Rofs of Kindefs and his Majestie's Advocat against Mr. John Bayne of Delnie, and that part thereof now infisted on, anent the pannel's negligence in his duety as ane Justice of Peace, in not apprehending the Lord Duffus, after committing the slaughter lybelled, with the heall debate relative thereto, they find the same not relevant.

Whereupon, on the 3^d of Jully, at Privy Counsell, Delnie pershues Rofs of Balnagoun for defamation of him, by pershuing him before the Criminal Court as guilty of Kindeas's murder, he being now affoilzied as innocent. Alleadged, *Quævis probabilis causa excusat a calumnia*, and here was *justus dolor*, in respect Delnie was present, and the party slain was Balnagoun's near kinsman. (See the case of Presumptions debate by Servin in the last part of his Pledois, pag. 52, anent the mother and the baxter's boy, ceited *supra* in Philip Stanfield's case, pag. 372.) The Lords affoilzied Balnagoun from being calumnious; bot ordained them to goe home, and live in amity and freindship together.

3 Julij 1688, *post meridiem*.—At Privy Counsell, the King's Indemnity is read, bot being clogged with such unusuall clauses, it alarumed them. Such as, all behooved to take ane testificat of it from James Stewart, and pay him money; which would bring in ane great summe to him and Melfort; whereupon it was sent back to the King to be amended. (See a full Indemnity at the 1st of October 1688.)

2^{do}. There was ane proclamation about the annuities of teynds, and their pryce, which was also reported to come to James Stewart, and his brother Coltness, (tho' not named) to pay his fyne, and compofi-

tion for redeeming of his forfeited lands from the Earle of Arran, the donator.

Eodem die, et seq.—The Convention of Burrows meetts at Edinburgh, and some of them propos'd the taking of the Test, and protest'd, it may not be imputed to them, since they were willing. And they commissiōnat Magnus Prince, Provost of Edinburgh, in their name to complement and congratulat the birth of the Prince; (tho' ane letter from them would have done the same thing;) and it was talk'd, he was allowed to gift him ane jewell worth 1000 l^b. sterling, and to give ane gratuity of 200 l^b. sterling to the Lady Powis the Governess, or to the Nurse.

No. 989, 4 *Julij* 1688.—Martine of Bullion's day. There was some rain on it.
p. 410.

No. 992, *Undecimo Julij* 1688.—Sir Alexander Gilmure of Craigmiller, per-
p. 412. fhues Captain Straitton for reduction of ane band of 2000 m^ks., as being for money lost at cards. The Lords, upon Straitton's oath, fand only 31 guinnees of it fell precisely under the [14th] A^ct of Parliament in 1621, anent play money; and ordain'd him to pay it in to them, for the use of the poor, except 5 l^b. sterling which by that law he may retain: The rest was lost by packing; so that is also *prodigo et perdituro credere, contra legem* — *ff. ad Senatus Consultum Macedonianum*.—Craigmiller got it not, bot had the pleasure to see part of it evict'd from Straitton.

No. 993, 12 *Julij* 1688.—The debate betuixt the Girdlemakers of Culrofs and
p. 412. Valleyfield is reported by Merfington. Culrofs, by their declarator, craved Valleyfield, and all others might be discharged to make girdles, in regard by ane old letter of King James 6th in 1599, and a gift from King Charles 2^d in 1666, the sole privilege was given to them, for their encouragment; they being the first inventors. Answer'd, This resolv'd in a down right monopolie, prohibited *leg. unica Cod. de monopolis*; and the most that ever was done, was to grant temporary ones, but not perpetual. (See the case of Sir Geills Mumpeffon in the English histories of Rushworth and Baker.) For they are against publick utility;

and the defenders were fewars to Valleyfield, whose lands were erected in a Barony; and by ane charter in 1662, before their gift in 1666, he had the priviledge of keeping Girdle-smiths, (*craticularum fabros*;) and that every Burrow or Barron might sett up what tradsmen or artificers they pleased, that being ane natural consequent of the liberty of the subje&t, and the reward of vertue and industry, to improve trades, and hinder extortion in pryces, *ubi vivitur ingenio*. And King James's letter is only to stop unfreemen to work within Culrofs, otherwayes any Corporation might get ane gift to hinder all others within Scotland bot themselves. The Lords, before answer to the debate, recommended to Drumcairn to take tryall of the Girdlemakers of Culrofs, if they have any other trade or craft then that of makeing girdles, and at what pryces they sell the same; and likewayes to try if the men in Valliefield doe make sufficient girdles, and at what pryces they make the same, and if they have any other trade then makeing of girdles; and if they were in use of makeing girdles before the resignation whereupon Valleyfield's charter proceeded.

12 *Julij* 1688.—The Chancelor getts doun ane new signator from No. 994 Court of all his lands, erecting them in ane Regality, and enlargeing the ^{p. 412.} bounds of his Stewartry, takeing in fundry lands belonging to the Marquess of Athole therein; this creates farder animosities betuixt the two families.

14 *Julij* 1688.—The Toun of Edinburgh finding ane great inconveni- No. 995, ence by the inhabitants flow removeing, fitting frequently forty days ^{p. 413.} after Whitsonday; to remeid this *prava consuetudo* they resolved to make ane A&t for the future, that all remove within eight days after the term. (See Dury 20th July 1633, Broun *contra* Maxwells.)

Eodem tempore.—Sarre, a Mountiebank, haveing got the licence from the Privy Counsell, and of Fountain Master of the Revells, and of the Magistrats of Edinburgh, to erect ane stage, he built it at the head of Blackfriar's Wynd; the Custome office being there, complained of it,

whereon the Magistrats took it down. He gave in ane lybell against them to the Privy Counsell. They answered, That he ought for to be first examined and tryed by the Colledge of Phyfitians, seeing it was knowen he had done hurt with his cures; and that in London and else where, remote places were assigned them, and offered him the Grafs-market, seeing it drew away servants and apprentices from their masters. The Chancelor, because he was Popish, caused them to put up ane stage in the Land-market. He craved also his dammadges, haveing many servants and players idle on his hand.

No. 996, 17 *Julij* 1688.—Do&tor Blaccader, new come from Holland, (who had
p. 413. been twife pardoned before, first for Bothuell-bridge, and then for Argyle's invafion,) was apprehended by the Chancelor's order, when he is vifiting Captain M'Kye in the Caftell of Edinburgh, and is put in clofs prifon, and at first in the irons, on the fufpition of keeping ane feditious intelligence and correſpondence with ſome in Holland. And Partridge's Almanack, called Mene Tekell, and letters and verſes are found on him, reflecting on the birth of the Prince of Wales.

No. 1000, 18 *Julij* 1688, *poſt meridiem*.—At Privy Counsell, Alexander Frazer
p. 415. of Kinnaries perſhues Findlay Frazer, Bailzie of Innerneſſe, for removing ane land-mark, contrare to the law of God, and the lawes of the twelve tables: *Si terminos exarrascit, ipſe boveſque ejus ſacri ſunto*. It was both ſacriledge and capitall. 2^{do}. For depauperating ſome wodſett lands, by carrying away the marle and beſt earth, and putting it upon his own property: which is oppreſſion. Answered, There was no deſigne to remove the march for advantage; bot the ſtone haveing fallen down and hindered the plough, it was ſet up again; and there was no prejudice; bot law does not in thir caſes conſider the dammadge ſo much as the fraudulent deſigne. And for the 2^d, Where the pitts was digged, it was ane common tie. The Lords admitted the lybell to probation.

2^{do}. The Toune of Kilmarnock perſhues the Earle theirow for fundry acts of oppreſſion; bot he prevailed, by threats and otherwayes, with ſeveralls of the poor people to diſclame it under their hands.

20 *Julij* 1688.—The Lords fand a fubfequent Sheriff-depute, could not difcharge a fine impofed by a former Sheriff-depute, but it belonged to his predeceffor. No. 1001,
p. 415.

21 *Julij* 1688.—The A& anent Nottars is made, that they fhall not fubfcribe for any except ather they know them, or it be attested to them by the witneffes that they are reallie the perfons they give themselves out for, becaufe there has been fraud ufed by fuborned and fuppoftitious perfons. (See the like caution adhibited for witneffes by the 3^d A& of the Parliament in 1681.) No. 1003,
p. 416.

Eodem tempore.—The Magiftrats of the Toun of Arbroath perfhues James Carnegy of Newgate, for purprufion, on the A& of King James 4^t, by encroaching on their marches, and fo to have loft his few. Alledged, Thir lands holding burgage, the Toun was not his fuperior, bot only the King, whose Bailies and Commiffioners they were; and fo the benefite and cafualty of the forfaultour did not accrefis to them, bot to the King: And he had turned Popifh to get ane gift of it. No. 1004,
p. 416.

Eodem die.—It was agitated where Wedderburn of Gofford's teftament fhould be confirmed; whither at Edinburgh as the *communis patria* of all Scotfmen dying abroad, (he being drowned at Calice,) or at Dunkell, within which diocefs his lands, and the heall paroch of Aberlady, lyes. And they contended, that the [88th] A& of Parliament, James 1, in 1426, was only of fuch who were abroad *animo remanendi*, whilk he was not, bot only travelling with ane defigne to return; and the domicile is mainly confidered, as was found in the late Earl of Panmure's cafe who dyed at Edinburgh, where he had refided fix moneths; yet the Comiffar of Brechen carried it, becaufe his family was there. (See alfo Stair's volume.)

24 *Julij* 1688.—Lord Lochore is admitted Privy Counfellor on a letter from the King, procured by Balcarras; and the Chancelor told him, it was the King's will that there fhould be no oaths put to him, nor any

other: And on this occasion he called for the King's Advocat, and ordained him to raise ane lybell before the Privy Counsell, to the first Counsell-day of October, against the Masters of the University Colledge of Aberdeen, for presumeing to take ane oath of the Students, when graduat, to profess the Protestant religion; seeing the King had discharged the exacting of any oathes; tho' their defence is, that, by their foundation and statuts, they are obleidged to doe it, and sworn thereto, and so cannot omit it without perjury. Which was also the Magdalen Colledge of Oxfoord's pley; and ane oath only to profess the Reformed religion seems very innocent. (See *infra* the very next day, oathes exacted in the searck for Houftoun.)

Eodem die.—There being ane report from the Western Shyres of Kircudbright, &c., that fundry would not appear, nor disown their principles, conform to the declaratione *supra*, 20 *Junij*. There is a Commission of Justiciary directed from the Privy Counsell to fundry Noblemen and Gentlemen in thesse Shyres, (wherein many of the strictest Presbyterians are named, which may straitten and ensnare them in their deportment,) to convene and execute capitall punishment on them.

25 *Julij* 1688.—On a surmise that Houftoun the feild-preacher (who had lately escaped when the Dragouns were assaulted) was in Edinburgh lurking, the ports are closed, and ane searck made, and any that are suspected are seized upon, and required upon oath to renounce the Covenant; tho' *die præcedente* oathes were forbidden. Bot this exacting of oathes was not ouned, when challenged.

No. 1008,
p. 418.

26 *Julij* 1688.—Captain John Ramfay, immediate younger brother to the late Earle of Dalhousie, being abroad, his younger brother, George, serves himself tutor of law to the Earle's children. John returning home, and clameing his right, took out ane breive for serving himself tutor: thereon there is first ane advocacy presented: And that being refused, then there is ane petition given in to the Lords for George, the present tutor; whereon the Lords stopt the service, till both parties should be heard: And at

calling it, being alledged, That *tutorem habenti tutor dari nequit*; and that George his gift standing, and being cled with long possession, it behooved to be reduced, and Captain John prove he was elder brother, and not thus summarly taken away. The Lords, considering that this was *notorium quod non eget probatione*, and that the tutorie was *ipso jure* null, and needed no reduction, they summarly annulled it, and ordained John's breiff to go on.

Then, on ane new bill and hearing, it was alledged, That the Earle, in his Testament, had made ane nomination of tutors, and three a quorum; and there were three who actually now accepted, viz., Sir George Mackenzie King's Advocate, Sir John Ramfay, and John Johnston of Poltoun; and Mr. Moor, the ladie's brother, wold also accept; tho' it was objected against him, that being ane English-Irish, he was incapable: Bot the Act of the *post nati*, made by King James 6th, habilitated him. The Chancellor was so offended with Sir George, that it moved him to say, That when the King had adoe with him, he always pretended ather conscience or prior engagements. Answered, They could not accept now after fix years cessation and negligence, and suffering one to enter tutor of law who had no right; and Sir John Ramfay had virtually renounced the office by acting as factor under him, and never making his compts yet, and so could not recurre now. Replyed, No prescription runs against tutors nominat, neither be the common law, *Lege ii. ff. de testamentaria tutela, quamdiu speratur tutor testamentarius cessat, et legitimus, et dativus*; nor by our decisions, Dury, 17 Decembris 1631, Auchterlonie and Oliphant, and the other cases their ceited: Whereas ane tutor of law ought to clame his right within the year, which Captain John did not; and Sir John Ramfay could not accept alone till other two wold act with him, and so he did not renounce; and he is responfall and most willing to compt. The Lords, much against the Chancellor's inclination, (Lochore and Auchtertoull voteing for Captain John,) preferred the tutors testamentar; in which the President was very zealous, fieving they designed to putt him in the hands of his uncle, a Papist, that the chyld might be bred at Dowie [Doway.] Instruments were taken be Captain John against the accepting tutors: 1^o That they may be lyeable for 200

lb. sterling of pension the Earle wold gett if the King had the disposeall of his education. 2^{do}. To be lyeable for all the prejudice he hath sustained thorow their not acceptance thesse fix years bygane. Bot tutors nominat are only lyeable from the date of their acceptation; which, as I have observed *alibi*, is most unjust, and was only introduced by Goffoord in his cuffing Wedderburn of Kingennie's caice with Scrymzeor. (See it in Staires, 19 *Julij* 1670, and 2 *Februarij* 1675.)

Eodem die.—At Privy Counsell, Bargeny fyned, (*de quo supra*, 28 *Martij*.)

27 *Julij* 1688.—Mr. M'Kell admitted Advocat, (*de quo supra*, pag. 406.)

Eodem die.—Drum's 6000 mks. decided, (see it *supra*, 25 *Julij* 1688.)

Eodem die.—Mr. Alexander Bruntffield and Smyth's reduction against Mr. James Borthwick of Stow, and his reliſt, is advyſed. Probatione having been led on a reason of death-bed, the Lords fand it proven, and reduced. It is now contended, That Mr. Alexander Hereot's comeing to Kirk and Market, at least his being at a christening after subscribing of that disposition was proven: And it was craved the Lords wold review and reconsider the probatione. This was objected against as *peſſimi exempli*, and what reflected on the Lords, and might unſecure and caſt looſe all the decreits *in foro*.

Eodem die.—Dirleton reported, (see it *supra*, marked 19 *Julij*.)

Eodem die.—The Lords, by ane Act of Sederunt, declare, that after wakenings and tranſſerrings are ſeen and returned, they need not byde the courſe of the roll, bot may be ſummarly called and decerned, or debated.

No. 1009, 28 *Julij* 1688, being Saturday, and the laſt day of the Outter-Houſe.—
p. 419. The Lords advyſed the proces betuixt the Earle of Balcarras, as affigney

constitute thereto be Mr. Robert Learmonth of Balcomie (contrare to that title of law, *ne quis in potentio rem titulos suos transferrat*,) and Mr. William Gordoun Advocat, who, to ballance it, had affigned it to the Duke of Gordoun a year agoe; and who founded on ane expyred compyfeing of the lands of Balcomie, (*de quo supra*, pag. [226.]) The reason of reduction was, That tho' the appryfeing defaulted a part of the foun as payed, yet it was led for the heall penalty, which it should also have deduced proportionally. Answered, *Pæna est jus indivisibile*, as Calvin in his *Lexicon Juris*, voce *Pæna*, affirms from *Cujas, ad legem 85, in fine ff. de verborum obligationibus*: So that how long any part of the principal foun is due, the heall penalty *in rigore* is exactable. Yet Dury, 22 February 1639, Johnston and Forbes, observes the Lords divyded the penalty. Before answer here, the Lords declared they wold call for some of the oldest and formallest Wryters to the Signet, who had as Clerks led appryfeings, and wold advyse what had been the custome: And they all, generally, (except Mr. Thomas Gordoun,) resolved, that in such ane case the penalty should have been restricted: Thereon the Lords reduced the compyfeing, *quoad* the legall, and fand it only a security for the founes therein contained and no farder; which was all Balcomie was seeking.

31 Julij 1688.—Tuesday, and last day of the Session.—The Lords No. 1010,
decyded that poynt betuixt the Duke of Queensberry and Wilfon of p. 419.
Spango, ane Papist, who was pershued by the Duke to compt for some years rents, wherein he was his Chamberland. The defence was, I was only employed as a factor under Mr. George Blair, who was the principal Chamberland; and *ita est*, you have discharged Mr. George, which must accreais to liberat me. Answered, Any discharge given Mr. George was without previous compt, and only given as ane personall complement, when the Duke returned first home from France; and therefor can never exoner the sub-factors who never have compted yet, ather to Mr. George or him. The Lords ordained him to compt.

P. 420.

HARVEST VACANCE.—1688.

The Law Occurrents dureing this Harveft Vacance, to the Revolution in November 1688, are obferved by me in a fmall 8^{vo} [4^{to}] Manuscript, and fo are forborne to be infert here ; but we may count it a furceaffe of juftice from Auguft 1688 to the 1st of November 1689 ; for albeit the Seffion fat during November 1688, yet by the Prince of Orange's arriveall then in England, no bufinefs was done, fave on a few bills.

As for the Decifions after the re-eftablifhment of the Seffion under King William in November 1689, fee the continuation of them fhortly remarked in other Manuscripts befide me.

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ERRATA.

Page 34, No. 374, *insert reference to footnote.*

- 89 to 89, *for 1673, read 1674.*
- 172, margin, *for August, read September.*
- 191, l. 9, *read, James said, "A lieutenant, &c. in the King's guard." And*
line 14, *boasted, "I trow I have pricked him;" but, &c.*
- 200, at 10th September, *add E p. 23, No. 44.*
- 219, last two lines *to read, viz., "That they, &c. to others."*
- 221, *for President Craigie, read President, Craigie.*
- 253, l. 17, *Item, &c., as a new paragraph.*
- 284, last line, *Inconvenient.*
- 286, l. 14, *for pag. 144, read pag. 244.*
- 293, l. 9, *insert SUMMER SESSION, 1681.*
- 293, l. 13, *for Hatton, read Halton.*
- 295, No. 605, *for Eodem primo Junij, read Nono Junij.*
- 306, l. 32, *delete comma after Bovata.*
- 333 l. penult, *delete comma before Clerk.*
- 361, l. 13, *delete Eodem.*
- 430, l. 1, *read supra.*
- 581, l. 24, *for 27, read 17.*
- 660, l. 19, *insert a comma after Cesnock.*
- 641, margin, *for 457, read 547.*
- 683, l. 14, *for Gray, read Gay.*
- 864, l. 17, *for giving to, read giving money to.*
- 869, *printed 896.*

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